



IOWA ADMINISTRATIVE BULLETIN

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PREFACE

The Iowa Administrative Bulletin is published biweekly pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action and rules adopted by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Regulatory Analyses; effective date delays and objections filed by the Administrative Rules Review Committee; Agenda for monthly Administrative Rules Review Committee meetings; and other materials deemed fitting and proper by the Administrative Rules Review Committee.

The Bulletin may also contain public funds interest rates [12C.6]; workers' compensation rate filings [515A.6(7)]; usury rates [535.2(3)"a"]; and agricultural credit corporation maximum loan rates [535.12].

PLEASE NOTE: Underscore indicates new material added to existing rules; ~~strike through~~ indicates deleted material.

STEPHANIE A. HOFF, Administrative Code Editor

Telephone: (515)281-3355

Fax: (515)281-5534

CITATION of Administrative Rules

The Iowa Administrative Code shall be cited as (agency identification number) IAC (chapter, rule, subrule, lettered paragraph, or numbered subparagraph).

441 IAC 79	(Chapter)
441 IAC 79.1	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)"a"	(Paragraph)
441 IAC 79.1(1)"a"(1)	(Subparagraph)

The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).

IAB Vol. XII, No. 23 (5/16/90) p. 2050, ARC 872A

NOTE: In accordance with Iowa Code section 2B.5A, a rule number within the Iowa Administrative Code includes a reference to the statute which the rule is intended to implement: 441—79.1(249A).

Schedule for Rule Making 2012

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 21 '11	Jan. 11 '12	Jan. 31 '12	Feb. 15 '12	Feb. 17 '12	Mar. 7 '12	Apr. 11 '12	July 9 '12
Jan. 6	Jan. 25	Feb. 14	Feb. 29	Mar. 2	Mar. 21	Apr. 25	July 23
Jan. 20	Feb. 8	Feb. 28	Mar. 14	Mar. 16	Apr. 4	May 9	Aug. 6
Feb. 3	Feb. 22	Mar. 13	Mar. 28	Mar. 30	Apr. 18	May 23	Aug. 20
Feb. 17	Mar. 7	Mar. 27	Apr. 11	Apr. 13	May 2	June 6	Sep. 3
Mar. 2	Mar. 21	Apr. 10	Apr. 25	Apr. 27	May 16	June 20	Sep. 17
Mar. 16	Apr. 4	Apr. 24	May 9	May 11	May 30	July 4	Oct. 1
Mar. 30	Apr. 18	May 8	May 23	***May 23***	June 13	July 18	Oct. 15
Apr. 13	May 2	May 22	June 6	June 8	June 27	Aug. 1	Oct. 29
Apr. 27	May 16	June 5	June 20	***June 20***	July 11	Aug. 15	Nov. 12
May 11	May 30	June 19	July 4	July 6	July 25	Aug. 29	Nov. 26
May 23	June 13	July 3	July 18	July 20	Aug. 8	Sep. 12	Dec. 10
June 8	June 27	July 17	Aug. 1	Aug. 3	Aug. 22	Sep. 26	Dec. 24
June 20	July 11	July 31	Aug. 15	Aug. 17	Sep. 5	Oct. 10	Jan. 7 '13
July 6	July 25	Aug. 14	Aug. 29	***Aug. 29***	Sep. 19	Oct. 24	Jan. 21 '13
July 20	Aug. 8	Aug. 28	Sep. 12	Sep. 14	Oct. 3	Nov. 7	Feb. 4 '13
Aug. 3	Aug. 22	Sep. 11	Sep. 26	Sep. 28	Oct. 17	Nov. 21	Feb. 18 '13
Aug. 17	Sep. 5	Sep. 25	Oct. 10	Oct. 12	Oct. 31	Dec. 5	Mar. 4 '13
Aug. 29	Sep. 19	Oct. 9	Oct. 24	***Oct. 24***	Nov. 14	Dec. 19	Mar. 18 '13
Sep. 14	Oct. 3	Oct. 23	Nov. 7	***Nov. 7***	Nov. 28	Jan. 2 '13	Apr. 1 '13
Sep. 28	Oct. 17	Nov. 6	Nov. 21	***Nov. 21***	Dec. 12	Jan. 16 '13	Apr. 15 '13
Oct. 12	Oct. 31	Nov. 20	Dec. 5	***Dec. 5***	Dec. 26	Jan. 30 '13	Apr. 29 '13
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Nov. 21	Dec. 12	Jan. 1 '13	Jan. 16 '13	Jan. 18 '13	Feb. 6 '13	Mar. 13 '13	June 10 '13
Dec. 5	Dec. 26	Jan. 15 '13	Jan. 30 '13	Feb. 1 '13	Feb. 20 '13	Mar. 27 '13	June 24 '13
Dec. 19	Jan. 9 '13	Jan. 29 '13	Feb. 13 '13	Feb. 15 '13	Mar. 6 '13	Apr. 10 '13	July 8 '13

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
19	Friday, March 2, 2012	March 21, 2012
20	Friday, March 16, 2012	April 4, 2012
21	Friday, March 30, 2012	April 18, 2012

PLEASE NOTE:

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

*****Note change of filing deadline*****

The Administrative Rules Review Committee will hold its regular, statutory meeting on Monday, March 12, 2012, at 8 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

AGING, DEPARTMENT ON[17]

Department planning responsibilities, ch 4 Notice of Termination **ARC 9992B** 2/8/12

AGRICULTURAL DEVELOPMENT AUTHORITY[25]

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]"umbrella"

Eligibility for beginning farmer tax credit program, 6.1 Filed **ARC 0021C** 2/22/12

ECONOMIC DEVELOPMENT AUTHORITY[261]

Endow Iowa tax credits, 47.1 to 47.5 Filed **ARC 0008C** 2/8/12

Brownfield and grayfield redevelopment, amendments to ch 65 Filed **ARC 0007C** 2/8/12

Tax credits for investments, chs 115, 116 Filed **ARC 0009C** 2/8/12

EDUCATION DEPARTMENT[281]

Accreditation standards—administration, school personnel, junior high program, 21st

century learning skills, 12.3(3), 12.4, 12.5 Filed **ARC 0016C** 2/22/12

Community college accreditation, 24.4 to 24.6 Filed **ARC 0015C** 2/22/12

Pathways for academic career and employment program; gap tuition assistance program, ch

25 Notice **ARC 0020C** 2/22/12

Funding for instructional programs for children residing in juvenile homes, ch 63 Notice **ARC 0019C** 2/22/12

Supplementary weighting—regional academy, 97.1, 97.4 Filed **ARC 0014C** 2/22/12

Uses of categorical funding—home school assistance program, physical plant and equipment

levy, 98.12, 98.64(2) Filed **ARC 0012C** 2/22/12

Business procedures and deadlines, ch 99 Filed **ARC 0013C** 2/22/12

Early ACCESS integrated system of early intervention services, ch 120 Notice **ARC 0018C** 2/22/12

ENVIRONMENTAL PROTECTION COMMISSION[567]

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Water quality certification, 61.2(2)"g" Notice **ARC 9998B** 2/8/12

Hazardous waste, rescind chs 140, 141, 148, 150, 151 Notice **ARC 9994B** 2/8/12

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

Executive branch lobbying reports, 2.15(10) Filed **ARC 9986B** 2/8/12

Lobbyist registration required, 8.7 Filed **ARC 9985B** 2/8/12

Executive branch lobbyist client reporting, 8.9 Filed **ARC 9984B** 2/8/12

Retention and availability of filed forms, 8.20 Filed **ARC 9983B** 2/8/12

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605]

PUBLIC DEFENSE DEPARTMENT[601]"umbrella"

Local emergency management, 7.2 to 7.7 Notice **ARC 0023C** 2/22/12

HUMAN SERVICES DEPARTMENT[441]

Medicaid—coverage of all smoking cessation products, 78.2(4)"b"(4) Filed **ARC 9981B** 2/8/12

IowaCare—Broadlawns Medical Center payments, 79.1(5)"v"(3), 92.8(9)

Filed Emergency **ARC 9996B** 2/8/12

IowaCare, 92.3(1), 92.7(3) Filed **ARC 9982B** 2/8/12

IOWA FINANCE AUTHORITY[265]

HOME partnership program, 39.4(1)"a" Notice **ARC 0004C**, also Filed Emergency **ARC 0003C** 2/8/12

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]

Benefits; vesting, amendments to chs 2, 4, 7, 11, 12, 14 Filed **ARC 0017C** 2/22/12

LABOR SERVICES DIVISION[875]

WORKFORCE DEVELOPMENT DEPARTMENT[871]"umbrella"

Elevator board—update of ASME codes; installation and remote manipulation of

conveyances; technical changes, amendments to chs 66, 68, 69, 71 to 73 Notice **ARC 0011C** 2/22/12

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Approved providers of chiropractic assistant training programs, 43.12(2)"a" Filed **ARC 0006C** 2/8/12

Chiropractic physicians—continuing education, 44.3(2)"a"(1) Notice **ARC 0010C** 2/22/12

Dietitians—discipline, 83.2(12) Filed **ARC 0022C** 2/22/12

Nursing home administrators—licensure, discipline, 141.9(1), 144.2(13) Filed **ARC 0024C** 2/22/12

PUBLIC HEALTH DEPARTMENT[641]

Screening program for breast and cervical cancer and cardiovascular disease, adopt ch 8;
 rescind ch 37 Notice **ARC 9995B** 2/8/12
 Iowa get screened: colorectal cancer program, ch 10 Notice **ARC 9997B** 2/8/12
 EMS providers—scope of practice, 131.3(3)“b” Notice **ARC 0002C** 2/8/12
 Emergency medical service—service program authorization, 132.1, 132.2, 132.8, 132.9,
 132.15 Notice **ARC 0001C** 2/8/12

PUBLIC SAFETY DEPARTMENT[661]

Identification cards for former peace officers of the department, ch 93 Notice **ARC 9988B** 2/8/12
 Adoption of updated federal standards for building accessibility, 302.1 to 302.11 Filed **ARC 9993B** 2/8/12

RACING AND GAMING COMMISSION[491]

INSPECTIONS AND APPEALS DEPARTMENT[481]“umbrella”
 Advance deposit wagering; horse racing; gambling games, amendments to chs 4, 8 to 11
Filed **ARC 9987B** 2/8/12

REVENUE DEPARTMENT[701]

Capital gain deduction or exclusion for certain types of net capital gains, 40.38 Notice **ARC 0005C** 2/8/12

SECRETARY OF STATE[721]

Election forms and instructions; voting systems; voter registration file, amendments to chs
 21, 22, 28 Notice **ARC 9990B**, also Filed Emergency **ARC 9989B** 2/8/12
 Registration of postsecondary schools, rescind ch 31 Notice **ARC 9999B** 2/8/12

TRANSPORTATION DEPARTMENT[761]

Issuance of licenses; testing and vehicle equipment; fee payment options, amendments to chs
 600, 604, 605, 615, 630 Filed **ARC 9991B** 2/8/12

ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

Regular, statutory meetings are held the second Tuesday of each month at the seat of government as provided in Iowa Code section 17A.8. A special meeting may be called by the Chair at any place in the state and at any time.

Senator Merlin Bartz
 2081 410th Street
 Grafton, Iowa 50440

Representative David Heaton
 510 East Washington Street
 Mt. Pleasant, Iowa 52641

Senator Thomas Courtney
 2609 Clearview
 Burlington, Iowa 52601

Representative Jo Oldson
 4004 Grand Avenue, #302
 Des Moines, Iowa 50312

Senator Wally Horn
 101 Stoney Point Road, SW
 Cedar Rapids, Iowa 52404

Representative Rick Olson
 3012 East 31st Court
 Des Moines, Iowa 50317

Senator John P. Kibbie
 P.O. Box 190
 Emmetsburg, Iowa 50536

Representative Dawn Pettengill
 P.O. Box A
 Mt. Auburn, Iowa 52313

Senator James Seymour
 901 White Street
 Woodbine, Iowa 51579

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EDUCATION DEPARTMENT[281]

Pathways for academic career and employment program; gap tuition assistance program, ch 25 IAB 2/22/12 ARC 0020C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	March 13, 2012 10 to 11 a.m.
Funding for instructional programs for children residing in juvenile homes, ch 63 IAB 2/22/12 ARC 0019C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	March 13, 2012 9 to 10 a.m.
Early ACCESS integrated system of early intervention services, ch 120 IAB 2/22/12 ARC 0018C (ICN Network)	ICN Classroom Grimes State Office Bldg. Des Moines, Iowa	March 13, 2012 2 to 3:30 p.m.
	Area Education Agency 267 3712 Cedar Heights Dr. Cedar Falls, Iowa	March 13, 2012 2 to 3:30 p.m.
	Turner Room, Green Hills AEA 1405 N. Lincoln Creston, Iowa	March 13, 2012 2 to 3:30 p.m.
	Room 2, Keystone Area Education Agency 2310 Chaney Rd. Dubuque, Iowa	March 13, 2012 2 to 3:30 p.m.
	Great Prairie Area Education Agency 2814 N. Court St. Ottumwa, Iowa	March 13, 2012 2 to 3:30 p.m.
	Room 206, Northwest AEA 1520 Morningside Ave. Sioux City, Iowa	March 13, 2012 2 to 3:30 p.m.
	ICN Classroom Williamsburg Jr-Sr High School 810 W. Walnut Williamsburg, Iowa	March 13, 2012 2 to 3:30 p.m.
	ICN Classroom Grimes State Office Building Des Moines, Iowa	March 15, 2012 2 to 3:30 p.m.
	Area Education Agency 267 3712 Cedar Heights Dr. Cedar Falls, Iowa	March 15, 2012 2 to 3:30 p.m.
	Turner Room, Green Hills AEA 1405 N. Lincoln Creston, Iowa	March 15, 2012 2 to 3:30 p.m.
	Room 225, Wahlert High School 2005 Kane St. Dubuque, Iowa	March 15, 2012 2 to 3:30 p.m.
	Room 117, Kirkwood Community College 1816 Lower Muscatine Rd. Iowa City, Iowa	March 15, 2012 2 to 3:30 p.m.
	Room 157, Ottumwa High School 501 E. 2nd Ottumwa, Iowa	March 15, 2012 2 to 3:30 p.m.

EDUCATION DEPARTMENT[281] (cont'd)**(ICN Network)**

Room D202
Western Iowa Tech Community College
4647 Stone Ave.
Sioux City, Iowa

March 15, 2012
2 to 3:30 p.m.

ENVIRONMENTAL PROTECTION COMMISSION[567]

Water quality certification,
61.2(2)“g”
IAB 2/8/12 **ARC 9998B**

Fifth Floor West Conference Room
Wallace State Office Bldg.
Des Moines, Iowa

March 13, 2012
1 p.m.

Hazardous waste,
rescind chs 140, 141, 148,
150, 151
IAB 2/8/12 **ARC 9994B**

Fifth Floor Conference Room
Wallace State Office Bldg.
Des Moines, Iowa

March 6, 2012
1 p.m.

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605]

Local emergency management,
7.2 to 7.7
IAB 2/22/12 **ARC 0023C**

Division Conference Room, Building W-4
Camp Dodge
7105 NW 70th Ave.
Johnston, Iowa

March 14, 2012
1 p.m.

LABOR SERVICES DIVISION[875]

Elevator board—update of ASME
codes; installation and remote
manipulation of conveyances;
technical changes, amendments
to chs 66, 68, 69, 71 to 73
IAB 2/22/12 **ARC 0011C**

Capitol View Room
1000 E. Grand Ave.
Des Moines, Iowa

March 14, 2012
9 a.m.
(If requested)

PROFESSIONAL LICENSURE DIVISION[645]

Chiropractic physicians—
continuing education, 44.3(2)“a”
IAB 2/22/12 **ARC 0010C**

Fifth Floor Board Conference Room
Lucas State Office Bldg.
Des Moines, Iowa

March 13, 2012
9 to 9:30 a.m.

PUBLIC SAFETY DEPARTMENT[661]

Identification cards for former
peace officers of the department,
ch 93
IAB 2/8/12 **ARC 9988B**

First Floor Conference Room
Public Safety Headquarters Bldg.
215 E. 7th St.
Des Moines, Iowa

April 3, 2012
9:30 a.m.

The following list will be updated as changes occur.

“Umbrella” agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory “umbrellas.”

Other autonomous agencies are included alphabetically in SMALL CAPITALS at the left-hand margin.

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ARC 0020C

EDUCATION DEPARTMENT[281]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 256.7(5) and 2011 Iowa Code Supplement sections 260H.8 and 260I.11, the State Board of Education hereby proposes to adopt new Chapter 25, “Pathways for Academic Career and Employment Program; Gap Tuition Assistance Program,” Iowa Administrative Code.

This chapter provides for the implementation of the pathways for academic career and employment program. This is a program for the development of projects that will lead to gainful, quality, in-state employment for members of target populations by providing them with both effective academic and employment training to secure such employment and customized support services to maintain such employment. This chapter also provides for the implementation of a need-based tuition assistance program to enable applicants to complete continuing education certificate training programs for in-demand occupations.

An agencywide waiver provision is provided in 281—Chapter 4.

Interested individuals may make written comments on the proposed rules on or before March 13, 2012, at 4:30 p.m. Comments on the proposed rules should be directed to Roger Utman, Iowa Department of Education, Second Floor, Grimes State Office Building, Des Moines, Iowa 50319-0146; telephone (515)281-8260; e-mail roger.utman@iowa.gov; or fax (515)281-6544.

A public hearing will be held on March 13, 2012, from 10 to 11 a.m., at the State Board Room, Second Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa, at which time persons may present their views either orally or in writing. Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact and advise the Department of Education of specific needs by calling (515)281-5295.

There will be an impact on jobs in the private sector. The Pathways for Academic Career and Employment (PACE) Program is targeted to match underemployed and unemployed workers with in-demand occupations in Iowa. PACE will assist private businesses and industry by providing skilled workers for a variety of positions. PACE will allow low-skilled/low-income unemployed and underemployed adult and dislocated workers to rapidly and efficiently acquire and demonstrate competency in a specified technical field. These occupations will be determined regionally and will include, but not be limited to: information technology, health care, advanced manufacturing and transportation. Certificate programs are aligned with credit certificates, diplomas and degrees. PACE does not replace existing training but will target a currently underserved population in the state.

These rules are intended to implement 2011 Iowa Code Supplement chapters 260H and 260I.

The following amendment is proposed.

Adopt the following **new** 281—Chapter 25:

CHAPTER 25
PATHWAYS FOR ACADEMIC CAREER AND EMPLOYMENT PROGRAM;
GAP TUITION ASSISTANCE PROGRAM

EDUCATION DEPARTMENT[281](cont'd)

DIVISION I
GENERAL PROVISIONS

281—25.1(260H,260I) Scope. The rules in this chapter implement the pathways for academic career and employment (PACE) program under 2011 Iowa Code Supplement chapter 260H and the gap tuition assistance program under 2011 Iowa Code Supplement chapter 260I.

281—25.2(260H,260I) Definitions.

“Department” means the Iowa department of education.

“Director” means the director of the Iowa department of education.

“Dislocated worker” means an individual eligible for services and benefits under the federal Trade Adjustment Act of 2002, P.L. 107-210. An individual must meet both criteria 1 and 2, plus any one of criteria 3 through 8:

1. The individual is registered for the selective service, if applicable; and
2. The individual is a citizen or national of the United States, a lawfully admitted permanent resident alien, a lawfully admitted refugee or parolee or an individual authorized by the Attorney General to work in the United States.
3. The individual:
 - Has been laid off or terminated, and
 - Is eligible for or has exhausted entitlement to unemployment compensation, and
 - Is unlikely to return to the individual’s previous industry or occupation; or
4. The individual:
 - Is in receipt of a notice of layoff or termination from employment, and
 - Will be entitled to unemployment compensation at the time of layoff or termination, and
 - Is unlikely to return to the individual’s previous industry or occupation; or
5. The individual:
 - Has been laid off or terminated, or has received a termination notice, and
 - Has been employed for a duration of time to sufficiently demonstrate attachment to the workforce, and
 - Is not eligible for unemployment compensation due to insufficient earnings, or has performed services for an employer not covered under the unemployment compensation law, and
 - Is unlikely to return to the individual’s previous industry or occupation; or
6. The individual has been laid off or terminated, or has received notice of layoff or termination, as a result of a permanent closure of or any substantial layoff at a plant, facility or enterprise; or
7. The individual was formerly self-employed and is unemployed from the individual’s business; or
8. The individual:
 - Is a displaced homemaker who has been providing unpaid services to family members in the home, and
 - Has been dependent on the income of another family member, and is no longer supported by that income, and
 - Is unemployed or underemployed, and
 - Is experiencing difficulty in obtaining or upgrading employment.

“Federal poverty level” means the most recently revised poverty income guidelines published by the federal Department of Health and Human Services.

“IWD” means the Iowa workforce development department.

“Low skilled” means an adult individual who is basic skills deficient, has lower level digital literacy skills, has an education below a high school diploma, or has a low level of educational attainment that inhibits the individual’s ability to compete for skilled occupations that provide opportunity for a self-sufficient wage.

“State board” means the Iowa state board of education.

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“Underemployed” means an adult individual who is working less than 30 hours per week, or who is employed any number of hours per week in a job that is substantially below the individual’s skill level and that does not lead to self-sufficiency.

“Unemployed” means an adult individual who is involuntarily unemployed and is actively engaged in seeking employment.

281—25.3 to 25.10 Reserved.

DIVISION II
PATHWAYS FOR ACADEMIC CAREER AND EMPLOYMENT (PACE) PROGRAM

281—25.11(260H) Purpose. The pathways for academic career and employment program is established to provide funding to community colleges for the development of projects that will lead to gainful, quality, in-state employment for members of target populations by providing them with both effective academic and employment training to ensure gainful employment and customized support services.

281—25.12(260H) Target populations. Individuals included in target populations are those individuals who meet one or more of the following:

1. Are deemed by definition to be low skilled.
2. Earn incomes at or below 200 percent of the federal poverty level.
3. Are unemployed.
4. Are underemployed.
5. Are dislocated workers.

281—25.13(260H) Eligibility criteria for projects. Projects eligible for funding for PACE shall be projects that further the ability of members of target populations to secure gainful, quality employment; that further partnerships linking community colleges to industry and nonprofit organizations; and that further the following program outcomes:

25.13(1) Enabling members of the target populations to:

- a. Acquire and demonstrate competency in basic skills.
- b. Acquire and demonstrate competency in a specified technical field.
- c. Complete a specified level of postsecondary education.
- d. Earn a national career readiness certificate.
- e. Obtain employer-validated credentials.
- f. Secure gainful employment in high-quality, local jobs.

25.13(2) Meeting economic and employment goals including but not limited to:

- a. Economic and workforce development requirements in each region served by the community colleges as defined by regional advisory boards established pursuant to Iowa Code section 84A.4.
- b. Needs of industry partners in areas including but not limited to the fields of information technology, health care, advanced manufacturing, transportation and logistics, and any other industry designated as in-demand by a regional advisory board established pursuant to Iowa Code section 84A.4.

281—25.14(260H) Program component requirements. Program components for a PACE project implemented at a community college shall:

25.14(1) Include measurable and effective recruitment, assessment, and referral activities designed for the target populations.

25.14(2) Integrate basic skills and work-readiness training with occupational skills training.

25.14(3) Combine customized supportive and case management services with training services to help participants overcome barriers to employment.

25.14(4) Provide training services at times, locations, and through multiple, flexible modalities that are easily understood and readily accessible to the target populations. Such modalities shall support open entry, individualized learning, and flexible scheduling, and may include online remediation, learning lab and cohort learning communities, tutoring, and modularization.

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281—25.15(260H) Pipeline program. Each community college receiving funding for PACE shall develop a pipeline program in order to better serve the academic, training, and employment needs of the target populations. A pipeline program shall have the following goals:

25.15(1) To strengthen partnerships with community-based organizations and industry representatives.

25.15(2) To improve and simplify the identification, recruitment, and assessment of qualified participants.

25.15(3) To conduct and manage an outreach, recruitment, and intake process, along with accompanying support services, reflecting sensitivity to the time and financial constraints and remediation needs of the target populations.

25.15(4) To conduct orientations for qualified participants to describe regional labor market opportunities, employer partners, and program requirements and expectations.

25.15(5) To describe the concepts of the project implemented with funds from PACE and the embedded educational and support resources available through such project.

25.15(6) To outline the basic skills participants will learn and describe the credentials participants will earn.

25.15(7) To describe success milestones and ways in which temporal and instructional barriers have been minimized or eliminated.

25.15(8) To review how individualized and customized service strategies for participants will be developed and provided.

281—25.16(260H) Career pathways and bridge curriculum development program. Each community college receiving funding for PACE shall develop a career pathway and bridge curriculum development program in order to better serve the academic, training, and employment needs of the target populations. A career pathways and bridge curriculum development program shall have the following goals:

25.16(1) The articulation of courses and modules, the mapping of programs within career pathways, and the establishment of bridges between credit and noncredit programs.

25.16(2) The integration and contextualization of basic skills education and skills training. This process shall provide for seamless progressions between adult basic education and general education development programs and continuing education and credit certificate, diploma, and degree programs.

25.16(3) The development of career pathways that support the attainment of industry-recognized credentials, diplomas, and degrees through stackable, modularized program delivery.

281—25.17 to 25.19 Reserved.

DIVISION III
GAP TUITION ASSISTANCE PROGRAM

281—25.20(260I) Purpose. A gap tuition assistance program is established to provide funding to community colleges for need-based tuition assistance to enable applicants to complete continuing education certificate training programs for in-demand occupations.

281—25.21(260I) Applicants for tuition assistance—eligibility criteria.

25.21(1) Eligibility for tuition assistance shall be based on financial need. Applicants may be found eligible for partial or total tuition assistance. Tuition assistance shall not be approved when the community college receiving the application determines that funding for an applicant's participation in an eligible certificate program is available from any other public or private funding source. Criteria to determine financial need shall include but not be limited to:

- a. The applicant's family income for the 12 months prior to the date of application.
- b. The applicant's family size.
- c. The applicant's county of residence.

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25.21(2) An applicant for tuition assistance under this chapter must have a demonstrated capacity to achieve the following outcomes:

- a. The ability to complete an eligible certificate program.
- b. The ability to enter a postsecondary certificate, diploma, or degree program for credit.
- c. The ability to gain full-time employment.
- d. The ability to maintain full-time employment over a period of time.

25.21(3) The community college receiving the application shall only approve an applicant for tuition assistance under this chapter if the community college determines the applicant is likely to succeed in achieving the outcomes described in subrule 25.16(2) after considering factors including but not limited to:

- a. Barriers that may prevent an applicant from completing the certificate program.
- b. Barriers that may prevent an applicant from gaining employment in an in-demand occupation.

281—25.22(260I) Applicants for tuition assistance—additional provisions.

25.22(1) An applicant for tuition assistance under this chapter shall provide to the gap tuition assistance coordinator at the community college receiving the application documentation of all sources of income.

25.22(2) Only an applicant eligible to work in the United States shall be approved for tuition assistance under this chapter.

25.22(3) An application shall be valid for six months from the date of signature on the application.

25.22(4) An applicant shall not be approved for tuition assistance under this chapter for more than one eligible certificate program.

25.22(5) Eligibility for tuition assistance under this chapter shall not be construed to guarantee enrollment in any community college certificate program.

25.22(6) Eligibility for tuition assistance under this chapter shall be limited to individuals earning incomes at or below 200 percent of the federal poverty level as defined by the most recently revised poverty income guidelines published by the United States Department of Health and Human Services.

281—25.23(260I) Eligible costs. Costs of a certificate program eligible for coverage by gap tuition assistance shall include but are not limited to the following:

1. Tuition.
2. Direct training costs.
3. Required books and equipment.
4. Fees, including but not limited to fees for industry testing services and background check testing services.

281—25.24(260I) Eligible certificate programs. For the purposes of this chapter, “eligible certificate program” means a program meeting all of the following criteria:

25.24(1) The program is not offered for credit, but is aligned with a certificate, diploma, or degree for credit, and does at least one of the following:

- a. Offers a nationally, locally, or state-recognized certificate.
- b. Offers preparation for a professional examination or licensure.
- c. Provides endorsement for an existing credential or license.
- d. Represents recognized skill standards defined by an industrial sector.
- e. Offers a similar PACE credential or training.

25.24(2) The program offers training or a credential in an in-demand occupation. For the purposes of this chapter, “in-demand occupation” includes occupations in information technology, health care, advanced manufacturing, transportation and logistics, and any other industry designated as in-demand by a regional advisory board established pursuant to Iowa Code section 84A.4.

281—25.25(260I) Initial assessment. An eligible applicant for tuition assistance under this chapter shall complete an initial assessment administered by the community college receiving the application

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to determine the applicant's readiness to complete an eligible certificate program. The assessment shall include assessments for completion of a national career readiness certificate, including the areas of reading for information, applied mathematics, and locating information. An applicant must achieve at least a national bronze-level certificate, defined as a minimum level 3 for reading, math, and locating information, in order to be approved for tuition assistance. An applicant shall complete any additional assessments and occupational research required by the PACE program or an eligible certificate program, or both.

281—25.26(260I) Program interview. An eligible applicant for tuition assistance under this chapter shall meet with the gap tuition assistance coordinator for an eligible certificate program offered by the community college receiving the application. The gap tuition assistance coordinator shall discuss the relevant industry, any applicable occupational research, and any applicable training relating to the eligible certificate program. The discussion shall include an evaluation of the applicant's capabilities, needs, family situation, work history, educational background, attitude and motivation, employment skills, vocational potential, and employment barriers. The discussion shall also include potential start dates, support needs, and other requirements for an eligible certificate program.

281—25.27(260I) Participation requirements.

25.27(1) A participant in an eligible certificate program who receives tuition assistance pursuant to this chapter shall do all of the following:

- a. Maintain regular contact with staff members for the certificate program to document the applicant's progress in the program.
- b. Sign a release form to provide relevant information to community college faculty or case managers.
- c. Discuss with staff members for the certificate program any issues that may impact the participant's ability to complete the certificate program, obtain employment, and maintain employment over a period of time.
- d. Attend all required courses regularly.
- e. Meet with staff members for the certificate program to develop a job search plan.

25.27(2) A community college may terminate tuition assistance for a participant who fails to meet the requirements of this rule. The process to appeal a termination will be provided to a participant through the gap tuition assistance coordinator.

281—25.28(260I) Oversight. Statewide oversight, evaluation, and reporting efforts for the gap tuition assistance program is coordinated by the department.

25.28(1) A steering committee, consisting of the Iowa department of education, the Iowa workforce development department, and community college continuing education deans and directors, is established to determine if the performance measures of the gap tuition assistance program are being met and to correct any deficiencies. The steering committee shall meet at least quarterly to evaluate and monitor the performance of the gap tuition assistance program.

25.28(2) A common intake tracking system is established to be implemented consistently by each participating community college. The community colleges will work cooperatively in establishing the system and the Iowa department of education will assist in gathering required reporting data elements through the community college Management Information System (MIS).

25.28(3) The steering committee will develop the required program criteria for PACE- and gap tuition assistance-certified programs to be eligible for tuition assistance and program funding. This criteria will be developed based on best practices in the development and delivery of career pathway programs that provide a clear sequence of education coursework and credentials aligned with regional workforce skill needs; clearly articulate from one level of instruction to the next; combine occupational skills and remedial adult education; lead to the attainment of a credential or degree; assist with job

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placement; and provide wrap-around social and socioeconomic support services with the goal of increasing the individual's skills attainment and employment potential.

These rules are intended to implement 2011 Iowa Code Supplement chapters 260H and 260I.

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Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby proposes to rescind Chapter 63, “Educational Programs and Services for Pupils in Juvenile Homes,” and to adopt new Chapter 63, “Funding for Instructional Programs for Children Residing in Juvenile Homes,” Iowa Administrative Code.

The provision of instructional programs for children residing in juvenile homes is the responsibility of the area education agency (AEA) in which the juvenile home is located. The Department proposes to adopt a new Chapter 63 to align the review of instructional programs in juvenile homes more closely with the existing accreditation process for area education agencies (AEAs) and the programs for which AEAs are responsible. By incorporating review processes that already exist into the new chapter, the Department has removed duplicative administrative and data burdens. In addition, the funding of these programs has been made more parallel to the funding of instructional programs offered to children who reside in state institutions or mental health institutions as provided in 281—Chapter 34.

An agencywide waiver provision is provided in 281—Chapter 4.

Interested individuals may make written comments on the proposed rules on or before March 13, 2012, at 4:30 p.m. Comments on the proposed rules should be directed to Jeff Berger, Deputy Director, Iowa Department of Education, Second Floor, Grimes State Office Building, Des Moines, Iowa 50319-0146; telephone (515)281-3968; E-mail jeff.berger@iowa.gov; or fax (515)242-5988.

A public hearing will be held on March 13, 2012, from 9 to 10 a.m. in the State Board Room on the second floor of the Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa, at which time persons may present their views either orally or in writing. Any person who desires to attend the public hearing and has special requirements, such as those related to hearing or mobility impairments, may advise the Department of Education of specific needs by calling (515)281-5295.

After analysis and review of this rule making, no impact on jobs has been found.

These rules are intended to implement Iowa Code sections 256.7(10), 273.2, 273.3, 282.30 and 282.31.

The following amendment is proposed.

Rescind 281—Chapter 63 and adopt the following **new** chapter in lieu thereof:

CHAPTER 63 FUNDING FOR INSTRUCTIONAL PROGRAMS FOR CHILDREN RESIDING IN JUVENILE HOMES

281—63.1(282) Scope. These rules apply to the funding and provision of appropriate educational services to children residing in juvenile detention homes or juvenile shelter care homes.

281—63.2(282) Definitions. For the purposes of these rules, the following definitions shall apply:

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“*AEA*” means an area education agency.

“*Aggregate days*” means the sum of the number of days of attendance, excluding days absent, for all school-age pupils who are enrolled during the school year. A student is considered enrolled after being placed in the juvenile home and taking part in the educational program. Enrollment begins on the date that the student begins taking part in the educational program and ends on the date that the student leaves the juvenile home, drops from the juvenile home educational program, is expelled from the juvenile home educational program, or receives a high school diploma or its equivalent, whichever occurs first.

“*Average daily attendance*” or “*ADA*” means the average obtained by dividing the total of the aggregate days of attendance by the total number of student contact days. ADA for purposes of this chapter shall be calculated on the regular school year exclusive of summer session.

“*Classroom aide*” means a person who assists a teacher in the performance of instructional tasks to support and assist classroom instruction and related school activities but is not certified as a para-educator.

“*Department*” means the state department of education.

“*IEP*” means an individualized education program, as defined by rule 281—41.22(256B,34CFR300).

“*Juvenile home*” means a juvenile detention home (a physically restricting facility used only for the detention of children) approved by the department of human services or a juvenile shelter care home (a physically unrestricting facility used only for the shelter care of children) approved or licensed by the department of human services located in the state of Iowa. “*Juvenile home*” does not include those facilities that are actually operated by the department of human services.

“*Para-educator*” means a person who is certified to assist a teacher in the performance of instructional tasks to support and assist classroom instruction and related school activities.

“*Regular school year*” means the number of days that school is in session, not to exceed 180 days. The regular school year for each juvenile home shall begin on the first day of school established by the school district in which each juvenile home is located.

“*School-age*” means a student who is a resident of the state of Iowa and who is at least 5 years of age, but less than 21 years of age on September 15 of the school year, and who has not graduated from a high school program or obtained a GED. School-age includes a younger student if that student is served pursuant to an IEP.

“*Student contact days*” means the days during which the educational program is provided and students are under the guidance and instruction of the professional instructional staff.

“*Teacher*” means a licensed member of the instructional staff, as defined in Iowa Code chapter 272, who diagnoses, prescribes, evaluates, and directs student learning in a manner which is consistent with professional practice and school objectives, shares responsibility for the development of an instructional program and any coordinating activities, evaluates or assesses student progress before and after instruction, and who uses the student evaluation or assessment information to promote additional student learning.

281—63.3(273,282) General principles.

63.3(1) *Availability.* All school-age children who reside in juvenile homes shall be provided appropriate educational services in accordance with these rules.

63.3(2) *Responsibility of AEAs for educational program.* It is the responsibility of the AEA in which the juvenile home is located to provide or make provision for appropriate educational services to children residing in these juvenile homes and to ensure appropriate transition of children back to the school district of residence. The AEA providing the educational program shall consider cost-effectiveness that minimizes the amount of funding that is taken from the school district’s state aid payments, and the educational program shall be provided pursuant to a written agreement which identifies the responsibilities of the AEA, the juvenile home, and any other agency with which the AEA contracts to provide the educational program. If the child has an IEP, the child shall be served pursuant to that IEP.

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63.3(3) Educational plan. The AEA shall have a written educational plan for its juvenile home educational program that at a minimum describes:

a. The general education program, including content standards, benchmarks, student learning goals and all other requirements of 281—Chapter 12.

b. Special education services, including instructional, support and other services that ensure the provision of a free appropriate public education in the least restrictive environment for students with disabilities in accordance with 281—Chapter 41.

c. Procedures that will be implemented to ensure the effective transition of each child back to the school district of the child's residence.

63.3(4) Contracting for services. In accordance with Iowa Code section 273.2, an AEA shall contract, whenever practicable, with other school corporations for the use of personnel, buildings, facilities, supplies, equipment, programs, and services.

63.3(5) Responsibility for AEA services. It is the responsibility of the AEA in which the juvenile home is located to provide media services, educational services, and special education support services. These services shall be comparable in nature and extent to the services provided to school districts in the AEA. Expenditures for these services are inherent costs to the AEA programs and shall not be assessed to the juvenile home educational program.

63.3(6) Basis for funding. Funding for general education programs at the juvenile homes shall be determined by use of a formula which is similar to the formula used for the determination of funding for local school districts but which also takes into consideration the unique setting of the juvenile homes.

281—63.4(273,282) Notification. The AEA in which the juvenile home is located shall notify the district of residence of each child who on the first day in October is residing in the juvenile home. The notification shall occur no sooner than the first day in October and no later than the fifteenth day in October. The AEA shall by the last Friday in October also notify the AEA of residence and the school district of residence of each child who is served pursuant to an IEP and is residing in the juvenile home. Notifications shall be in writing or in a printable electronic medium and shall include the child's name, birth date and grade level and the names and addresses of the child's parents or guardians.

281—63.5(282) Accounting for average daily attendance. Each AEA shall keep for each juvenile home within the AEA a daily register that shall include the name, birth date, district of residence, attendance, and enrollment status of each student. Students who are not residents of the state of Iowa or students who are not residing in the juvenile home shall be excluded from the average daily attendance for purposes of funding under this chapter. At the end of the school year, each AEA shall calculate the average daily attendance for students participating in the juvenile home educational program. The average daily attendance shall be reported to the department by August 1 and shall separately identify students who are not residents of Iowa, students who are served pursuant to an IEP, and students who are not served pursuant to an IEP.

281—63.6(282) Juvenile home cost per pupil. The department shall calculate the juvenile home educational program average cost per pupil for each AEA, and a juvenile home educational program state cost per pupil, from the 2010-2011 juvenile home claim information. The department shall adjust the cost as necessary for any distorting financial transactions and for any waivers granted. The AEA's juvenile home educational program average cost per pupil will be calculated as the total expenditures for juvenile home instruction paid from the juvenile home advance funding, adjusted for distorting financial transactions and waivers and net of revenues received or that should have been received, divided by the total average daily attendance for all of the AEA's juvenile home programs. The juvenile home educational program state cost per pupil will be calculated on the sum of the adjusted total juvenile home instruction expenditures from the advance funding divided by the sum of the average daily attendance for all juvenile home instructional programs in all AEAs. Each subsequent year, the department shall calculate the allowable growth for the juvenile home educational program cost per pupil. The department shall calculate the juvenile home educational program allowable growth for a

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budget year by multiplying the state percent of growth for the budget year established pursuant to Iowa Code subsection 257.8(1) by the juvenile home educational program state cost per pupil for the base year. The AEA's juvenile home educational program cost per pupil shall be the sum of the allowable growth dollar amount per pupil and the AEA's juvenile home educational program cost per pupil for the base year. If an AEA establishes a juvenile home educational program and did not have a program in the 2010-2011 school year, the AEA shall use the juvenile home educational program state cost per pupil.

281—63.7(273,282) Budget submission. Each AEA shall submit a juvenile home educational program budget for the following school year to the department as part of the AEA's annual budget submission. The budget shall be based on the average daily attendance of the children residing in the juvenile homes located within the AEA who are Iowa residents and of school age and for whom no other entity is required to pay tuition. The average daily attendance used for the budget shall be the average daily attendance for the school year that ended the previous June 30. If a juvenile home is no longer in operation, the average daily attendance shall be reduced for the average daily attendance of students that had resided in that juvenile home. The budget total amount shall be the average daily attendance, as adjusted, multiplied by the AEA's juvenile home cost per pupil for the budget year.

281—63.8(282,291) Accounting for actual program costs. Each AEA shall submit an accounting for the actual cost of the juvenile home educational program to the department by September 15 as part of the AEA's certified annual report. Funding for the juvenile home instructional program shall be used only for expenditures directly related to providing the juvenile home educational program described in the juvenile home educational program plan. Revenues, expenditures, and balances of the juvenile home educational program shall be accounted for in the manner provided in Uniform Financial Accounting for Iowa School Districts and AEAs.

63.8(1) Fund. Juvenile home educational programs shall be accounted for in a special revenue fund. The fund balance shall be maintained in the special revenue fund at year end, and the continuance or disposition of positive or negative fund balances shall be determined by the department.

63.8(2) Tuition. Tuition paid or billed or received shall be calculated as follows:

a. If juvenile home students not requiring special education attend a local school district other than the district of residence, tuition shall be calculated in the manner prescribed in Iowa Code section 282.24 for determining tuition costs for any nonresident student attending a local school district and shall be paid by the AEA.

b. Tuition for juvenile home students provided a special education program pursuant to an IEP shall be billed by the AEA and paid by the district of residence, in accordance with 281—Chapter 41 and pursuant to Iowa Code chapter 282, to the district in which the juvenile home is located or to the AEA, whichever is providing the special education program.

63.8(3) Revenues. Revenues received, such as grants, tuition, and categorical aid, that are related to the expenditures in the juvenile home program instruction fund shall be accounted for in the juvenile home program instruction fund.

63.8(4) Instructional costs. Eighty percent of the total program costs shall be expended on instruction, student support services, and instructional staff support services as defined in Uniform Financial Accounting for Iowa School Districts and AEAs. In determining the 80 percent, the costs for instruction, student support services, and instructional staff support services shall not include any personnel costs other than those for classroom teachers and classroom aides or para-educators.

63.8(5) Unallowed costs. Costs shall not include expenditures for debt services or for facilities acquisition and construction services including remodeling and facility repair or any costs listed in 281—subrule 98.72(3). Costs of residential, custodial, treatment, and similar services shall be provided by the juvenile home and shall not be included in the actual program costs.

63.8(6) Summer school costs. Summer session programs may be operated pursuant to Iowa Code subsection 282.31(5), but the costs of the program are considered to be included in the juvenile home educational program cost per pupil and not in addition to the juvenile home educational program cost per pupil.

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63.8(7) *Instruction to students who are not Iowa residents.* Costs for providing instruction to students who are not residents of the state of Iowa shall be paid by the juvenile home and shall be excluded from the actual program cost calculations and from the average daily attendance calculations.

63.8(8) *Instruction to students not residing in the juvenile home.* Costs for providing instruction to students who are not residing in the juvenile home shall be excluded from the actual program cost calculations and from the average daily attendance calculations.

63.8(9) *Financial management.* The juvenile home educational program advance is categorical funding and follows the general provisions in Division I of 281—Chapter 98 and the specific provisions in rule 281—98.72(282,298A).

281—63.9(256,282) Department review. The department shall review all expenditures included on the budget or submitted for the claim for compliance with the guidelines adopted pursuant to Iowa Code section 256.7, subsection 10, and shall approve or modify the expenditures accordingly. Notwithstanding rule 281—63.6(256,282), if the amount of the fund balance remaining at the end of the fiscal year to be carried forward exceeds 10 percent of the total advance revenues received for that year, the department shall reduce the AEA's juvenile home educational program cost per pupil by the same percent that the fund balance exceeded 10 percent. The department shall notify the department of revenue and the department of management of the approved budget amount to be paid to each AEA. After the budget is approved, the budget will not be further adjusted until the claim is processed.

281—63.10(282) Claim processing. After department review pursuant to rule 281—63.9(256,282), the final cost allowed to the AEA for the claim will be the higher of the average daily attendance that was submitted for the budget or the actual average daily attendance for the claim year, multiplied by the AEA's juvenile home educational program cost per pupil for the claim year. The department shall compare the approved claim amount to any amounts paid by the department of revenue, and any differences shall be added to or subtracted from the October payment for the next school year.

281—63.11(11,282) Audit. Each AEA shall make the records related to providing educational services to students residing within the juvenile homes available to independent auditors, state auditors and department staff upon request.

These rules are intended to implement Iowa Code sections 256.7(10), 273.2, 273.3, 282.30 and 282.31.

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Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby proposes to rescind Chapter 120, “Early ACCESS Integrated System of Early Intervention Services,” Iowa Administrative Code, and to adopt a new Chapter 120 with the same title.

The sequence and format of the proposed new Chapter 120 parallel the pertinent federal regulations under Part C of the Individuals with Disabilities Education Act. As a matter of convenience for Early ACCESS practitioners and families, proposed new Chapter 120 aligns the rules with federal statutory and regulatory changes. The substantive revisions in proposed Chapter 120 include state monitoring and general supervision, timelines for referrals for evaluation and assessment, and the conduct and content of

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evaluations and assessments. The changes are necessary to allow Iowa to continue to draw down federal Part C dollars and are family-friendly in that they streamline the process by which a family may access services under the chapter for a child under the age of three years.

An agencywide waiver provision is provided in 281—Chapter 4.

Any interested person may submit electronic, oral or written comments on or before March 15, 2012, by addressing them to Thomas Mayes, Legal Consultant, Bureau of Student and Family Support Services, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146; telephone (515)242-5614; fax (515)281-6019; E-mail Thomas.Mayes@Iowa.gov.

Two public hearings will be held over the Iowa Communications Network (ICN). The public hearings are scheduled on March 13, 2012, from 2 to 3:30 p.m. and on March 15, 2012, from 2 to 3:30 p.m., at which persons may present their views orally or in writing. The following ICN sites will be available:

March 13, 2012

2 to 3:30 p.m.

Grimes State Office Building, ICN Classroom
400 E. 14th St.
Des Moines

Area Education Agency 267
3712 Cedar Heights Dr.
Cedar Falls

Green Hills Area Education Agency, Turner Room
1405 N. Lincoln
Creston

Keystone Area Education Agency, Rm. 2
2310 Chaney Rd.
Dubuque

Great Prairie Area Education Agency
2814 N. Court St.
Ottumwa

Northwest Area Education Agency, Rm. 206
1520 Morningside Ave.
Sioux City

Williamsburg Jr-Sr High School, ICN Classroom
810 W. Walnut
Williamsburg

March 15, 2012

2 to 3:30 p.m.

Grimes State Office Building, ICN Classroom
400 E. 14th St.
Des Moines

Area Education Agency 267
3712 Cedar Heights Dr.
Cedar Falls

Green Hills Area Education Agency, Turner Room
1405 N. Lincoln
Creston

Wahlert High School, Rm. 225
2005 Kane St.
Dubuque

Kirkwood Community College, Rm. 117
1816 Lower Muscatine Rd.
Iowa City

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Ottumwa High School, Rm. 157
501 E. 2nd
Ottumwa

Western Iowa Tech Community College, Rm. D202
4647 Stone Ave.
Sioux City

Persons requiring reasonable accommodations to participate in public hearings because of a disability should contact the Iowa Department of Education at (515)281-3176 no later than March 6, 2012. All ICN sites are accessible to persons with disabilities.

After analysis and review of this rule making, no impact on jobs has been found.

These rules are intended to implement the Individuals with Disabilities Education Act as amended through July 1, 2005, and Part 303 of Title 34 of the Code of Federal Regulations published in the Federal Register on September 28, 2011.

The following amendment is proposed.

Rescind 281—Chapter 120 and adopt the following **new** chapter in lieu thereof:

CHAPTER 120
EARLY ACCESS INTEGRATED SYSTEM OF
EARLY INTERVENTION SERVICES

DIVISION I
PURPOSE AND APPLICABILITY

281—120.1(34CFR303) Purposes and outcomes of the Early ACCESS Integrated System of Early Intervention Services.

120.1(1) *Establishment of Early ACCESS Integrated System of Early Intervention Services.* This chapter establishes Iowa's Early ACCESS Integrated System of Early Intervention Services, which is Iowa's implementation of Part C of the Individuals with Disabilities Education Act.

120.1(2) *Purposes.* The purposes of this chapter are as follows:

- a. Develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system that provides early intervention services for infants and toddlers with disabilities and their families;
- b. Facilitate the coordination of payment for early intervention services from federal, state, local, and private sources (including public and private insurance coverage);
- c. Enhance Iowa's capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to infants and toddlers with disabilities and their families; and
- d. Enhance the capacity of state and local agencies and service providers to identify, evaluate, and meet the needs of all children, including historically underrepresented populations, particularly minority, low-income, inner-city, and rural children, and infants and toddlers in foster care.

120.1(3) *Overall outcomes.* The overall intended outcome of Early ACCESS is to provide early intervention resources, supports, and services to eligible children and their families within a coordinated, integrated system. Early ACCESS is aimed at the following four outcomes:

- a. Enhancing the development of eligible children;
- b. Reducing educational costs to society by minimizing the need for special education and related services after such children reach school age;
- c. Preparing eligible children for school entry; and
- d. Enhancing the capacity of families to meet the unique needs of their eligible children.

281—120.2(34CFR303) Applicability of this chapter. The provisions of this chapter apply to the Iowa department of education, as the state lead agency, the signatory agencies identified in subrule 120.39(15),

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and any early intervention service (EIS) provider that is part of the statewide system of early intervention, regardless of whether that EIS provider receives funds under Part C of the Act. The chapter applies to all children referred to the Part C program, including infants and toddlers with disabilities consistent with the definitions in rules 281—120.6(34CFR303) and 281—120.21(34CFR303), and their families. The provisions of this chapter do not apply to any child with a disability receiving a “free appropriate public education” or “FAPE” under 34 CFR Part 300.

281—120.3(34CFR303) Applicable federal regulations.

120.3(1) General. The following regulations apply to this chapter:

- a. The regulations at 34 CFR Part 303.
- b. The Education Department General Administrative Regulations (EDGAR), including 34 CFR Parts 76 (except for §76.103), 77, 79, 80, 81, 82, 84, 85, and 86.

120.3(2) References in EDGAR. In applying EDGAR regulations cited in subrule 120.3(1), any reference to:

- a. “State educational agency” means the Iowa department of education, the lead agency under this chapter; and
- b. “Education records” or “records” means early intervention records.

DIVISION II
DEFINITIONS

281—120.4(34CFR303) Act. “Act” means the Individuals with Disabilities Education Act. Part B of the Act, 34 CFR Part 300, establishes special education for children with disabilities who are age three to the maximum age in Iowa Code section 256B.8. Part B of the Act includes early childhood special education under Section 619 of the Act. Part C of the Act, 34 CFR Part 303, establishes the infants and toddlers program for eligible individuals from birth to age three.

281—120.5(34CFR303) At-risk infant or toddler. “At-risk infant or toddler” means an individual under three years of age who would be at risk of experiencing a substantial developmental delay if early intervention services were not provided to the individual.

281—120.6(34CFR303) Child. “Child” means an individual under the age of six and may include an “infant or toddler with a disability,” as that term is defined in rule 281—120.21(34CFR303).

281—120.7(34CFR303) Consent.

120.7(1) Obtaining consent. “Consent” is obtained when all of the following conditions are satisfied:

- a. The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent’s native language, as defined in rule 281—120.25(34CFR303);
- b. The parent understands and agrees in writing to the carrying out of the activity for which the parent’s consent is sought, and the consent form describes that activity and lists the early intervention records (if any) that will be released and to whom they will be released; and
- c. The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

120.7(2) Revoking consent. If a parent revokes consent, that revocation is not retroactive (i.e., it does not apply to an action that occurred before the consent was revoked).

281—120.8(34CFR303) Council. “Council” means the Iowa council for Early ACCESS, which is the state interagency coordinating council that meets the requirements of Division VIII of this chapter.

281—120.9(34CFR303) Day. “Day” means calendar day, unless otherwise indicated.

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281—120.10(34CFR303) Developmental delay. “Developmental delay,” when used with respect to a child residing in a state, has the meaning given that term by the state under rule 281—120.111(34CFR303).

281—120.11(34CFR303) Early intervention service program. “Early intervention service program” or “EIS program” means an entity designated by the lead agency for reporting under rules 281—120.700(34CFR303) through 281—120.702(34CFR303).

281—120.12(34CFR303) Early intervention service provider.

120.12(1) General. “Early intervention service provider” or “EIS provider” means an entity (whether public, private, or nonprofit) or an individual that provides early intervention services under Part C of the Act, whether or not the entity or individual receives federal funds under Part C of the Act, and may include, where appropriate, the lead agency and a public agency responsible for providing early intervention services to infants and toddlers with disabilities in the state under Part C of the Act.

120.12(2) Responsibilities. An EIS provider is responsible for:

a. Participating in the multidisciplinary individualized family service plan (IFSP) team’s ongoing assessment of an infant or toddler with a disability and a family-directed assessment of the resources, priorities, and concerns of the infant’s or toddler’s family, as related to the needs of the infant or toddler, in the development of integrated goals and outcomes for the IFSP;

b. Providing early intervention services in accordance with the IFSP of the infant or toddler with a disability; and

c. Consulting with and training parents and others regarding the provision of the early intervention services described in the IFSP of the infant or toddler with a disability.

120.12(3) Rule of construction. “Early ACCESS service provider” is a synonym for “early intervention service provider.”

281—120.13(34CFR303) Early intervention services.

120.13(1) General. “Early intervention services” means developmental services that:

a. Are provided under public supervision;

b. Are selected in collaboration with the parents;

c. Are provided at no cost, except, subject to rules 281—120.520(34CFR303) and 281—120.521(34CFR303), where federal or state law provides for a system of payments by families, including, if applicable, a schedule of sliding fees;

d. Are designed to meet the developmental needs of an infant or toddler with a disability and the needs of the family to assist appropriately in the infant’s or toddler’s development, as identified by the IFSP team, in any one or more of the following areas, including:

(1) Physical development;

(2) Cognitive development;

(3) Communication development;

(4) Social or emotional development; or

(5) Adaptive development;

e. Meet the standards of the state in which the early intervention services are provided, including but not limited to the then-applicable version of Iowa’s Early Learning Standards and the requirements of Part C of the Act;

f. Include services identified under subrule 120.13(2);

g. Are provided by qualified personnel (as that term is defined in rule 281—120.31(34CFR303)), including the types of personnel listed in subrule 120.13(3);

h. To the maximum extent appropriate, are provided in natural environments, as defined in rule 281—120.26(34CFR303) and consistent with rule 281—120.126(34CFR303) and subrule 120.344(4); and

i. Are provided in conformity with an IFSP adopted in accordance with Section 636 of the Act and rule 281—120.20(34CFR303).

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120.13(2) *Types of early intervention services.* Subject to subrule 120.13(4), early intervention services include the following services defined in this subrule:

a. Assistive technology device and assistive technology service are defined as follows:

(1) “Assistive technology device” means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of an infant or toddler with a disability. “Assistive technology device” does not include a medical device that is surgically implanted, including a cochlear implant, or the optimization (e.g., mapping), maintenance, or replacement of that device.

(2) “Assistive technology service” means any service that directly assists an infant or toddler with a disability in the selection, acquisition, or use of an assistive technology device. “Assistive technology service” includes:

1. The evaluation of the needs of an infant or toddler with a disability, including a functional evaluation of the infant or toddler with a disability in the child’s customary environment;

2. Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by infants or toddlers with disabilities;

3. Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

4. Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

5. Training or technical assistance for an infant or toddler with a disability or, if appropriate, that child’s family; and

6. Training or technical assistance for professionals (including individuals providing education or rehabilitation services) or other individuals who provide services to, or are otherwise substantially involved in the major life functions of, infants and toddlers with disabilities.

b. “Audiology services” includes:

(1) Identification of children with auditory impairments, using at-risk criteria and appropriate audiologic screening techniques;

(2) Determination of the range, nature, and degree of hearing loss and communication functions, by use of audiological evaluation procedures;

(3) Referral for medical and other services necessary for the habilitation or rehabilitation of an infant or toddler with a disability who has an auditory impairment;

(4) Provision of auditory training, aural rehabilitation, speech reading and listening devices, orientation and training, and other services;

(5) Provision of services for prevention of hearing loss; and

(6) Determination of the child’s individual amplification, including selecting, fitting, and dispensing appropriate listening and vibrotactile devices, and evaluating the effectiveness of those devices.

c. “Family training, counseling, and home visits” means services provided, as appropriate, by social workers, psychologists, and other qualified personnel to assist the family of an infant or toddler with a disability in understanding the special needs of the child and enhancing the child’s development.

d. “Health services” has the meaning given the term in rule 281—120.16(34CFR303).

e. “Medical services” means services provided by a licensed physician for diagnostic or evaluation purposes to determine a child’s developmental status and need for early intervention services.

f. “Nursing services” includes:

(1) The assessment of health status for the purpose of providing nursing care, including the identification of patterns of human response to actual or potential health problems;

(2) The provision of nursing care to prevent health problems, restore or improve functioning, and promote optimal health and development; and

(3) The administration of medications, treatments, and regimens prescribed by a licensed physician.

g. “Nutrition services” includes:

(1) Conducting individual assessments in:

1. Nutritional history and dietary intake;

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2. Anthropometric, biochemical, and clinical variables;
 3. Feeding skills and feeding problems; and
 4. Food habits and food preferences;
- (2) Developing and monitoring appropriate plans to address the nutritional needs of children eligible under this chapter, based on the findings in subparagraph 120.13(2)“g”(1); and
- (3) Making referrals to appropriate community resources to carry out nutrition goals.
- h.* “Occupational therapy” includes services to address the functional needs of an infant or toddler with a disability related to adaptive development, adaptive behavior, and play, and sensory, motor, and postural development. These services are designed to improve the child’s functional ability to perform tasks in home, school, and community settings, and include:
- (1) Identification, assessment, and intervention;
 - (2) Adaptation of the environment, and selection, design, and fabrication of assistive and orthotic devices to facilitate development and promote the acquisition of functional skills; and
 - (3) Prevention or minimization of the impact of initial or future impairment, delay in development, or loss of functional ability.
- i.* “Physical therapy” includes services to address the promotion of sensorimotor function through enhancement of musculoskeletal status, neurobehavioral organization, perceptual and motor development, cardiopulmonary status, and effective environmental adaptation. These services include:
- (1) Screening, evaluation, and assessment of children to identify movement dysfunction;
 - (2) Obtaining, interpreting, and integrating information appropriate to program planning to prevent, alleviate, or compensate for movement dysfunction and related functional problems; and
 - (3) Providing individual and group services or treatment to prevent, alleviate, or compensate for movement dysfunction and related functional problems.
- j.* “Psychological services” includes:
- (1) Administering psychological and developmental tests and other assessment procedures;
 - (2) Interpreting assessment results;
 - (3) Obtaining, integrating, and interpreting information about child behavior and child and family conditions related to learning, mental health, and development; and
 - (4) Planning and managing a program of psychological services, including psychological counseling for children and parents, family counseling, consultation on child development, parent training, and education programs.
- k.* “Service coordination services” has the meaning given the term in rule 281—120.34(34CFR303).
- l.* “Sign language and cued language services” includes teaching sign language, cued language, and auditory/oral language, providing oral transliteration services (such as amplification), and providing sign and cued language interpretation.
- m.* “Social work services” includes:
- (1) Making home visits to evaluate a child’s living conditions and patterns of parent-child interaction;
 - (2) Preparing a social or emotional developmental assessment of the infant or toddler within the family context;
 - (3) Providing individual and family-group counseling with parents and other family members, and appropriate social skill-building activities with the infant or toddler and parents;
 - (4) Working with those problems in the living situation (home, community, and any center where early intervention services are provided) of an infant or toddler with a disability and the family of that child that affect the child’s maximum utilization of early intervention services; and
 - (5) Identifying, mobilizing, and coordinating community resources and services to enable the infant or toddler with a disability and the family to receive maximum benefit from early intervention services.
- n.* “Special instruction” includes:
- (1) The design of learning environments and activities that promote the infant’s or toddler’s acquisition of skills in a variety of developmental areas, including cognitive processes and social interaction;

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(2) Curriculum planning, including the planned interaction of personnel, materials, and time and space, that leads to achieving the outcomes in the IFSP for the infant or toddler with a disability;

(3) Providing families with information, skills, and support related to enhancing the skill development of the child; and

(4) Working with the infant or toddler with a disability to enhance the child's development.

o. "Speech-language pathology services" includes:

(1) Identification of children with communication or language disorders and delays in development of communication skills, including the diagnosis and appraisal of specific disorders and delays in those skills;

(2) Referral for medical or other professional services necessary for the habilitation or rehabilitation of children with communication or language disorders and delays in development of communication skills; and

(3) Provision of services for the habilitation, rehabilitation, or prevention of communication or language disorders and delays in development of communication skills.

p. "Transportation and related costs" includes the cost of travel and other costs that are necessary to enable an infant or toddler with a disability and the child's family to receive early intervention services.

q. "Vision services" means:

(1) Evaluation and assessment of visual functioning, including the diagnosis and appraisal of specific visual disorders, delays, and abilities that affect early childhood development;

(2) Referral for medical or other professional services necessary for the habilitation or rehabilitation of visual functioning disorders, or both; and

(3) Communication skills training, orientation and mobility training for all environments, visual training, and additional training necessary to activate visual motor abilities.

120.13(3) *Qualified personnel.* The following are the types of qualified personnel who provide early intervention services under this chapter:

a. Audiologists.

b. Family therapists.

c. Nurses.

d. Occupational therapists.

e. Orientation and mobility specialists.

f. Pediatricians and other physicians for diagnostic and evaluation purposes.

g. Physical therapists.

h. Psychologists.

i. Registered dietitians.

j. Social workers.

k. Special educators, including teachers of children with hearing impairments (including deafness) and teachers of children with visual impairments (including blindness).

l. Speech and language pathologists.

m. Vision specialists, including ophthalmologists and optometrists.

120.13(4) *Other services.* The services and personnel identified and defined in subrules 120.13(2) and 120.13(3) do not comprise exhaustive lists of the types of services that may constitute early intervention services or the types of qualified personnel that may provide early intervention services. Nothing in rule 281—120.13(34CFR303) prohibits the identification in the IFSP of another type of service as an early intervention service provided that the service meets the criteria identified in subrule 120.13(1) or of another type of personnel that may provide early intervention services in accordance with this chapter, provided such personnel meet the requirements in rule 281—120.31(34CFR303).

120.13(5) *Rule of construction.* "Early ACCESS services" is a synonym for the services described in this rule.

281—120.14(34CFR303) *Elementary school.* "Elementary school" means a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under state law.

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281—120.15(34CFR303) Free appropriate public education. “Free appropriate public education” or “FAPE,” as used in rule 281—120.521(34CFR303), means special education and related services that are provided at public expense, under public supervision and direction, and without charge; that meet the standards of the state educational agency (SEA), including the requirements of Part B of the Act; that include an appropriate preschool, elementary school, or secondary school education in the state involved; and that are provided in conformity with an individualized education program (IEP) that meets the requirements of 34 CFR 300.320 through 300.324.

281—120.16(34CFR303) Health services.

120.16(1) General. “Health services” means services necessary to enable an otherwise eligible child to benefit from the other early intervention services under this chapter during the time that the child is eligible to receive early intervention services.

120.16(2) Examples of health services. “Health services” includes:

- a. Such services as clean intermittent catheterization, tracheostomy care, tube feeding, the changing of dressings or colostomy collection bags, and other health services; and
- b. Consultation by physicians with other service providers concerning the special health care needs of infants and toddlers with disabilities that will need to be addressed in the course of providing other early intervention services.

120.16(3) Services excluded. “Health services” does not include:

- a. Services that are:
 - (1) Surgical in nature (such as cleft palate surgery, surgery for club foot, or the shunting of hydrocephalus);
 - (2) Purely medical in nature (such as hospitalization for management of congenital heart ailments, or the prescribing of medicine or drugs for any purpose); or
 - (3) Related to the implementation, optimization (e.g., mapping), maintenance, or replacement of a medical device that is surgically implanted, including a cochlear implant.
 1. Nothing in this chapter limits the right of an infant or toddler with a disability with a surgically implanted device (e.g., cochlear implant) to receive the early intervention services that are identified in the child’s IFSP as being needed to meet the child’s developmental outcomes.
 2. Nothing in this chapter prevents the EIS provider from routinely checking that either the hearing aid or the external components of a surgically implanted device (e.g., cochlear implant) of an infant or toddler with a disability are functioning properly;
 - b. Devices (such as heart monitors, respirators and oxygen, and gastrointestinal feeding tubes and pumps) necessary to control or treat a medical condition; and
 - c. Medical-health services (such as immunizations and regular “well-baby” care) that are routinely recommended for all children.

281—120.17(34CFR303) Homeless children. “Homeless children” means children who meet the definition given the term “homeless children and youths” in Section 725 (42 U.S.C. 11434a) of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11431 et seq.

281—120.18(34CFR303) Include; including. “Include” or “including” means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.

281—120.19(34CFR303) Indian; Indian tribe. “Indian” means an individual who is a member of an Indian tribe. “Indian tribe” means any federal or state Indian tribe, band, rancheria, pueblo, colony, community, or settlement, including any Alaska Native village or regional village corporation (as defined in or established under the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 et seq.). Nothing in this definition is intended to indicate that the Secretary of the Interior is required to provide services or funding to a state Indian tribe that is not listed in the Federal Register list of Indian entities recognized as eligible to receive services from the United States, published pursuant to Section 104 of the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a-1.

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281—120.20(34CFR303) Individualized family service plan. “Individualized family service plan” or “IFSP” means a written plan for providing early intervention services to an infant or toddler with a disability under this chapter and the infant’s or toddler’s family that is based on the evaluation and assessment described in rule 281—120.321(34CFR303); that includes the content specified in rule 281—120.344(34CFR303); that is implemented as soon as possible once parental consent for the early intervention services in the IFSP is obtained (consistent with rule 281—120.420(34CFR303)); and that is developed in accordance with the IFSP procedures in rules 281—120.342(34CFR303), 281—120.343(34CFR303), and 281—120.345(34CFR303).

281—120.21(34CFR303) Infant or toddler with a disability. “Infant or toddler with a disability” means an individual under three years of age who needs early intervention services because the individual:

120.21(1) Is experiencing a developmental delay, which is a 25 percent delay as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas:

- a. Cognitive development;
- b. Physical development, including vision and hearing;
- c. Communication development;
- d. Social or emotional development;
- e. Adaptive development; or

120.21(2) Has a diagnosed physical or mental condition that:

- a. Has a high probability of resulting in developmental delay; and
- b. Includes conditions such as chromosomal abnormalities; genetic or congenital disorders; sensory impairments; inborn errors of metabolism; disorders reflecting disturbance of the development of the nervous system; congenital infections; severe attachment disorders; and disorders secondary to exposure to toxic substances, including fetal alcohol syndrome.

281—120.22(34CFR303) Lead agency. “Lead agency” is the Iowa department of education, as designated by the governor, to receive funds under Section 643 of the Act and to administer the state’s responsibilities under Part C of the Act.

281—120.23(34CFR303) Local educational agency.

120.23(1) General. “Local educational agency” or “LEA” means a public board of education or other public authority legally constituted within the state for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of the state, or for a combination of school districts or counties as are recognized in the state as an administrative agency for its public elementary schools or secondary schools.

120.23(2) Educational service agencies and other public institutions or agencies. “Educational service agencies and other public institutions or agencies” includes the following:

- a. “Educational service agency,” defined as a regional public multiservice agency:
 - (1) Authorized by state law to develop, manage, and provide services or programs to LEAs; and
 - (2) Recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the state.

b. Any other public institution or agency having administrative control and direction of a public elementary school or secondary school, including a public charter school that is established as an LEA under state law.

c. Entities that meet the definition of “intermediate educational unit” or “IEU” in Section 602(23) of the Act, as in effect prior to June 4, 1997. Under that definition, an “intermediate educational unit” or “IEU” means any public authority other than an LEA that:

- (1) Is under the general supervision of the state educational agency;
- (2) Is established by state law for the purpose of providing FAPE on a regional basis; and
- (3) Provides special education and related services to children with disabilities within the state.

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120.23(3) BIE-funded schools. “BIE-funded schools” includes an elementary school or secondary school funded by the Bureau of Indian Education, and not subject to the jurisdiction of any SEA other than the Bureau of Indian Education, but only to the extent that the inclusion makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the LEA receiving assistance under the Act with the smallest student population.

281—120.24(34CFR303) Multidisciplinary. “Multidisciplinary” means the involvement of two or more separate disciplines or professions and, with respect to:

1. Evaluation of the child in rule 281—120.113(34CFR303) and subrule 120.321(1) and assessments of the child and family in subrule 120.321(1), may include one individual who is qualified in more than one discipline or profession; and

2. The IFSP team in rule 281—120.340(34CFR303) must include the involvement of the parent and two or more individuals from separate disciplines or professions and one of these individuals must be the service coordinator (consistent with subrule 120.343(1)).

281—120.25(34CFR303) Native language.

120.25(1) Limited English proficiency. “Native language,” when used with respect to an individual who is limited English proficient or LEP (as that term is defined in Section 602(18) of the Act), means:

a. The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except as provided in paragraph 120.25(1)“b”; and

b. For evaluations and assessments conducted pursuant to subrule 120.321(1), the language normally used by the child, if determined developmentally appropriate for the child by qualified personnel conducting the evaluation or assessment.

120.25(2) Deaf or hard of hearing; blind or visually impaired; no written language. “Native language,” when used with respect to an individual who is deaf or hard of hearing, blind or visually impaired, or for an individual with no written language, means the mode of communication that is normally used by the individual (such as sign language, braille, or oral communication).

281—120.26(34CFR303) Natural environments. “Natural environments” means settings that are natural or typical for a same-aged infant or toddler without a disability, may include the home or community settings, and must be consistent with the provisions of rule 281—120.126(34CFR303).

281—120.27(34CFR303) Parent.

120.27(1) General. “Parent” means:

a. A biological or adoptive parent of a child;

b. A foster parent, unless state law, regulations, or contractual obligations with a state or local entity prohibit a foster parent from acting as a parent;

c. A guardian generally authorized to act as the child’s parent, or authorized to make early intervention, educational, health or developmental decisions for the child (but not the state if the child is a ward of the state);

d. An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child’s welfare; or

e. A surrogate parent who has been appointed in accordance with rule 281—120.422(34CFR303) or Section 639(a)(5) of the Act.

120.27(2) Rules of construction and application. The following rules are to be used to determine whether a party qualifies as a “parent.”

a. Except as provided in paragraph 120.27(2)“b,” the biological or adoptive parent, when attempting to act as the parent under this chapter and when more than one party is qualified under subrule 120.27(1) to act as a parent, must be presumed to be the parent for purposes of rule

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281—120.27(34CFR303) unless the biological or adoptive parent does not have legal authority to make educational or early intervention services decisions for the child.

b. If a judicial decree or order identifies a specific person or persons under paragraphs 120.27(1) “*a*” through “*d*” to act as the “parent” of a child or to make educational or early intervention service decisions on behalf of a child, then the person or persons must be determined to be the “parent” for purposes of Part C of the Act, except that if an EIS provider or a public agency provides any services to a child or any family member of that child, that EIS provider or public agency may not act as the parent for that child.

281—120.28(34CFR303) Parent training and information center. “Parent training and information center” means a center assisted under Section 671 or 672 of the Act.

281—120.29(34CFR303) Personally identifiable information. “Personally identifiable information” means personally identifiable information as defined in 34 CFR 99.3, except that the term “student” in the definition of “personally identifiable information” in 34 CFR 99.3 means “child” as used in this chapter and any reference to “school” means “EIS provider” as used in this chapter.

281—120.30(34CFR303) Public agency. As used in this chapter, “public agency” means the lead agency and any other agency or political subdivision of the state.

281—120.31(34CFR303) Qualified personnel. “Qualified personnel” means personnel who have met state-approved or state-recognized certification, licensing, registration, or other comparable requirements that apply to the areas in which the individuals are conducting evaluations or assessments or providing early intervention services.

281—120.32(34CFR303) Scientifically based research. “Scientifically based research” has the meaning given the term in Section 9101(37) of the Elementary and Secondary Education Act of 1965 (ESEA). In applying the ESEA to the regulations under Part C of the Act, any reference to “education activities and programs” refers to “early intervention services.”

281—120.33(34CFR303) Secretary. “Secretary” means the Secretary of the United States Department of Education.

281—120.34(34CFR303) Service coordination services (case management).

120.34(1) General.

a. As used in this chapter, “service coordination services” means services provided by a service coordinator to assist and enable an infant or toddler with a disability and the child’s family to receive the services and rights, including procedural safeguards, required under this chapter.

b. Each infant or toddler with a disability and the child’s family must be provided with one service coordinator who is responsible for:

- (1) Coordinating all services required under this chapter across agency lines; and
- (2) Serving as the single point of contact for carrying out the activities described in this subrule and subrule 120.34(2).

c. Service coordination is an active, ongoing process that involves:

- (1) Assisting parents of infants and toddlers with disabilities in gaining access to, and coordinating the provision of, the early intervention services required under this chapter;
- (2) Using family-centered practices in all contacts with families; and
- (3) Coordinating the other services identified in the IFSP under subrule 120.344(5) that are needed by, or are being provided to, the infant or toddler with a disability and that child’s family.

120.34(2) Specific service coordination services. Service coordination services include:

- a.* Explaining the system of services and resources called Early ACCESS;

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- b. Assisting parents of infants and toddlers with disabilities in obtaining access to needed early intervention services and other services identified in the IFSP, including making referrals to providers for needed services and scheduling appointments for infants and toddlers with disabilities and their families;
- c. Coordinating the provision of early intervention services and other services (such as educational, social, and medical services that are not provided for diagnostic or evaluative purposes) that the child needs or is being provided;
- d. Coordinating evaluations and assessments;
- e. Facilitating and participating in the development, review, and evaluation of IFSPs;
- f. Conducting referral and other activities to assist families in identifying available EIS providers;
- g. Coordinating, facilitating, and monitoring the delivery of services required under this chapter to ensure that the services are provided in a timely manner;
- h. Conducting follow-up activities to determine that appropriate Part C services are being provided;
- i. Informing families of their rights and procedural safeguards, as set forth in Division VI of this chapter and related resources;
- j. Coordinating the funding sources for services required under this chapter; and
- k. Facilitating the development of a transition plan to preschool, school, or, if appropriate, to other services.

120.34(3) *Use of the term “service coordination” or “service coordination services.”* The lead agency’s or an EIS provider’s use of the term “service coordination” or “service coordination services” does not preclude characterization of the services as case management or any other service that is covered by another payor of last resort (including Title XIX of the Social Security Act—Medicaid), for purposes of claims in compliance with the requirements of rules 281—120.501(34CFR303) through 281—120.521(34CFR303) (payor of last resort provisions).

120.34(4) *Appointment of service coordinator.* A service coordinator shall be appointed to families as soon as possible after a referral is received. Continuity of services for the child and the child’s family shall be a consideration in the determination of whether a change is made in the service coordinator at any time following initial appointment.

120.34(5) *Required service coordinator qualifications.* In addition to the requirements of subrule 120.119(1), a service coordinator must be a person who has completed a competency-based training program with content related to knowledge and understanding of eligible children, these rules, the nature and scope of services in Early ACCESS in the state, and the system of payments for services, as well as service coordination responsibilities and strategies. The competency-based training program, approved by the department, shall include different training formats and differentiated training to reflect the background and knowledge of the trainees, including those persons who are state-licensed professionals whose scope of practice includes service coordination. The department or its designee shall determine whether service coordinators have successfully completed the training.

281—120.35(34CFR303) State. “State” means each of the 50 states, the Commonwealth of Puerto Rico, the District of Columbia, and the four outlying areas and jurisdictions of Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

281—120.36(34CFR303) State educational agency. “State educational agency” or “SEA” means the state board of education or other agency or officer primarily responsible for the state supervision of public elementary schools and secondary schools or, if there is no such officer or agency, an officer or agency designated by the governor or by state law. “State educational agency” includes the agency that receives funds under Sections 611 and 619 of the Act to administer the state’s responsibilities under Part B of the Act. In Iowa, the SEA is the Iowa department of education.

281—120.37(34CFR303) Ward of the state.

120.37(1) General. Subject to subrules 120.37(2) and 120.37(3), “ward of the state” means a child who, as determined by the state where the child resides, is:

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- a. A foster child;
- b. A ward of the state; or
- c. In the custody of a public child welfare agency.

120.37(2) Exception. “Ward of the state” does not include a foster child who has a foster parent who meets the definition of “parent” in rule 281—120.27(34CFR303).

120.37(3) Interpretive note. “Ward of the state” is a term rarely used in Iowa law. It would be an extremely rare occurrence for a child to be a ward of the state while not being either a foster child or in the custody of a public child welfare agency.

281—120.38(34CFR303) Other definitions used in this chapter. The following terms apply to this chapter:

120.38(1) Area education agency. “Area education agency” or “AEA” is a political subdivision of the state organized pursuant to Iowa Code chapter 273.

120.38(2) Board. “Board” means the Iowa state board of education.

120.38(3) Community partners. “Community partners” means local providers of signatory agencies, as well as other public or private community programs or agencies, including Early Head Start, child care providers, early childhood Iowa areas, and health programs, that work with Early ACCESS, as described in rule 281—120.803(34CFR303).

120.38(4) Department. “Department” means the Iowa department of education.

120.38(5) Director of education. “Director of education” means the state director of the Iowa department of education.

120.38(6) Early childhood Iowa area. “Early childhood Iowa area” means a partnership in a local community with broad representation to lead collaborative efforts involving education, health, and human services programs and services on behalf of children, families and other citizens residing in the local community’s geographic area. An early childhood Iowa area mobilizes individuals and their communities to achieve desired results in order to improve the well-being and quality of life for families with young children from birth through the age of five years.

120.38(7) Early childhood special education. “Early childhood special education” or “ECSE” means special education and related services under Part B of the Act for those individuals with disabilities younger than the age of six.

120.38(8) Eligible child. “Eligible child” is a synonym for “infant or toddler with a disability,” as defined in rule 281—120.21(34CFR303).

120.38(9) Family. “Family” means the persons who are primarily responsible for the care and nurturing in a child’s daily life, including biological or adoptive parents, grandparents, guardians, persons acting as parents, siblings, stepparents, or unmarried partners of parents.

120.38(10) GEPA. “GEPA” is an acronym for the General Education Provisions Act.

120.38(11) Grantee. “Grantee” means a recipient of funds under Part C of the Act or state funds designated for Early ACCESS that has the fiscal and legal obligation to ensure that the Early ACCESS system is implemented regionally. The term “grantee” shall not be construed in a manner that conflicts with the Act.

120.38(12) Individualized family service plan team. “Individualized family service plan team” or “IFSP team” includes the members described in subrule 120.343(1).

120.38(13) Informed clinical opinion. “Informed clinical opinion” means the integration of the results of evaluations, direct observations in various settings, and varied activities with the experience, knowledge, and skills of qualified personnel.

120.38(14) School year. “School year” means the period during which students who are 3 years of age through 21 years of age attend school.

120.38(15) Signatory agency. “Signatory agency” means the departments of education, public health, and human services and the child health specialty clinics.

120.38(16) Signature. “Signature” has the meaning given the term in Iowa Code section 4.1(39).

281—120.39 to 120.99 Reserved.

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DIVISION III
STATE ELIGIBILITY FOR A GRANT AND REQUIREMENTS
FOR A STATEWIDE SYSTEM: GENERAL AUTHORITY AND ELIGIBILITY

281—120.100(34CFR303) General authority. The Secretary, in accordance with Part C of the Act, makes grants to states (from their allotments under Section 643 of the Act) to assist each state to maintain and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system to provide early intervention services for infants and toddlers with disabilities and their families.

281—120.101(34CFR303) State eligibility—requirements for a grant under Part C of the Act. In order to be eligible for a grant under Part C of the Act for any fiscal year, the state must meet the following conditions:

120.101(1) Assurances regarding early intervention services and a statewide system. The state must provide the following assurances to the Secretary that:

a. The state has adopted a policy that appropriate early intervention services, as defined in rule 281—120.13(34CFR303), are available to all infants and toddlers with disabilities in the state and their families, including:

(1) Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the state;

(2) Infants and toddlers with disabilities who are homeless children and their families; and

(3) Infants and toddlers with disabilities who are wards of the state; and

b. The state has in effect a statewide system of early intervention services that meets the requirements of Section 635 of the Act, including policies and procedures that address, at a minimum, the components required in rules 281—120.111(34CFR303) through 281—120.126(34CFR303).

120.101(2) State application and assurances. The state must provide information and assurances to the Secretary, in accordance with 34 CFR §303.200 through 34 CFR §303.236, including:

a. Information that shows that the state meets the application requirements in rules 281—120.200(34CFR303) through 281—120.212(34CFR303); and

b. Assurances that the state also meets the requirements in rules 281—120.221(34CFR303) through 281—120.227(34CFR303).

120.101(3) Approval before implementation. The state must obtain approval by the Secretary before implementing any policy or procedure required to be submitted as part of the state's application in 34 CFR §§303.203, 303.204, 303.206, 303.207, 303.208, 303.209, and 303.211.

281—120.102(34CFR303) State conformity with Part C of the Act. Each state that receives funds under Part C of the Act must ensure that any state rules, regulations, and policies relating to this chapter conform to the purposes and requirements of 34 CFR Part 303.

281—120.103 and 120.104 Reserved.

281—120.105(34CFR303) Positive efforts to employ and advance qualified individuals with disabilities. Each recipient of assistance under Part C of the Act must make positive efforts to employ and advance in employment qualified individuals with disabilities in programs assisted under Part C of the Act.

281—120.106 to 120.109 Reserved.

281—120.110(34CFR303) Minimum components of a statewide system. Each statewide system (system) must include, at a minimum, the components described in rules 281—120.111(34CFR303) through 281—120.126(34CFR303).

281—120.111(34CFR303) State definition of developmental delay. The system must include the state's rigorous definition of developmental delay, consistent with rule 281—120.10(34CFR303) and subrule 120.203(3), that will be used by the state in carrying out programs under Part C of the Act in

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order to appropriately identify infants and toddlers with disabilities who are in need of services under Part C of the Act. The definition must:

120.111(1) Describe, for each of the areas listed in subrule 120.21(1), the evaluation and assessment procedures, consistent with rule 281—120.321(34CFR303), that will be used to measure a child's development; and

120.111(2) Specify that 25 percent is the applicable level of developmental delay in functioning or other comparable criteria to constitute a developmental delay in one or more of the developmental areas identified in subrule 120.21(1).

281—120.112(34CFR303) Availability of early intervention services. Each system must include a state policy that is in effect and that ensures that appropriate early intervention services are based on scientifically based research, to the extent practicable, and are available to all infants and toddlers with disabilities and their families, including:

120.112(1) Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the state; and

120.112(2) Infants and toddlers with disabilities who are homeless children and their families.

281—120.113(34CFR303) Evaluation, assessment, and nondiscriminatory procedures.

120.113(1) General. Subject to subrule 120.113(2), each system must ensure the performance of the following:

a. A timely, comprehensive, multidisciplinary evaluation of the functioning of each infant or toddler with a disability in the state; and

b. A family-directed identification of the needs of the family of the infant or toddler to assist appropriately in the development of the infant or toddler.

120.113(2) Rule of construction. The evaluation and family-directed identification required in subrule 120.113(1) must meet the requirements of rule 281—120.321(34CFR303).

281—120.114(34CFR303) Individualized family service plan (IFSP). Each system must ensure, for each infant or toddler with a disability and the infant's or toddler's family in the state, that an IFSP, as defined in rule 281—120.20(34CFR303), is developed and implemented that meets the requirements of rules 281—120.340(34CFR303) through 281—120.345(34CFR303), and that includes service coordination services, as defined in rule 281—120.34(34CFR303).

281—120.115(34CFR303) Comprehensive child find system. Each system must include a comprehensive child find system that meets the requirements in rules 281—120.302(34CFR303) and 281—120.303(34CFR303).

281—120.116(34CFR303) Public awareness program. Each system must include a public awareness program that focuses on the early identification of infants and toddlers with disabilities; and provides information to parents of infants and toddlers through primary referral sources in accordance with rule 281—120.301(34CFR303).

281—120.117(34CFR303) Central directory. Each system must include a central directory that is accessible to the general public (i.e., through the department's Web site and other appropriate means) and includes accurate, up-to-date information about:

120.117(1) Public and private early intervention services, resources, and experts available in the state;

120.117(2) Professional and other groups (including parent support, and training and information centers, such as those funded under the Act) that provide assistance to infants and toddlers with disabilities eligible under Part C of the Act and their families; and

120.117(3) Research and demonstration projects being conducted in the state relating to infants and toddlers with disabilities.

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281—120.118(34CFR303) Comprehensive system of personnel development (CSPD). Each system must include a comprehensive system of personnel development (CSPD), including the training of paraprofessionals and the training of primary referral sources with respect to the basic components of early intervention services available in the state.

120.118(1) Required elements. A CSPD must include:

- a. Training personnel to implement innovative strategies and activities for the recruitment and retention of EIS providers;
- b. Promoting the preparation of EIS providers who are fully and appropriately qualified to provide early intervention services under this chapter; and
- c. Training personnel to coordinate transition services for infants and toddlers with disabilities who are transitioning from an early intervention service program under Part C of the Act to a preschool program under Section 619 of the Act, Head Start, Early Head Start, an elementary school program under Part B of the Act, or another appropriate program.

120.118(2) Optional elements. A CSPD may include:

- a. Training personnel to work in rural and inner-city areas;
- b. Training personnel in the emotional and social development of young children;
- c. Training personnel to support families in participating fully in the development and implementation of the child's IFSP; and
- d. Training personnel who provide services under this chapter using standards that are consistent with early learning personnel development standards funded under the state advisory council on early childhood education and care established under the Head Start Act, if applicable.

281—120.119(34CFR303) Personnel standards.

120.119(1) General. Each system must include policies and procedures relating to the establishment and maintenance of qualification standards to ensure that personnel necessary to carry out the purposes of this chapter are appropriately and adequately prepared and trained.

120.119(2) Qualification standards. The policies and procedures required in subrule 120.119(1) must provide for the establishment and maintenance of qualification standards that are consistent with any state-approved or state-recognized certification, licensing, registration, or other comparable requirements that apply to the profession, discipline, or area in which personnel are providing early intervention services.

120.119(3) Use of paraprofessionals and assistants. Nothing in Part C of the Act may be construed to prohibit the use of paraprofessionals and assistants who are appropriately trained and supervised in accordance with state law, regulation, or written policy to assist in the provision of early intervention services under Part C of the Act to infants and toddlers with disabilities.

281—120.120(34CFR303) Lead agency role in supervision, monitoring, funding, interagency coordination, and other responsibilities. Iowa's system includes the designation of the Iowa department of education as lead agency, with a single line of responsibility for the following items:

120.120(1) General supervision. The department is responsible for the following:

- a. The general administration and supervision of programs and activities administered by agencies, institutions, organizations, and EIS providers receiving assistance under Part C of the Act.
- b. The monitoring of programs and activities used by the state to carry out Part C of the Act (whether or not the programs or activities are administered by agencies, institutions, organizations, and EIS providers that are receiving assistance under Part C of the Act) to ensure that the state complies with Part C of the Act, including:
 - (1) Monitoring agencies, institutions, organizations, and EIS providers used by the state to carry out Part C of the Act;
 - (2) Enforcing any obligations imposed on those agencies, institutions, organizations, and EIS providers under Part C of the Act and these rules;
 - (3) Providing technical assistance, if necessary, to those agencies, institutions, organizations, and EIS providers;

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(4) Correcting any noncompliance identified through monitoring as soon as possible and in no case later than one year after the lead agency's identification of the noncompliance; and

(5) Conducting the activities in subparagraphs 120.120(1) "a"(1) through (4), consistent with rules 281—120.700(34CFR303) through 281—120.707(34CFR303), and any other activities required by the state under those rules.

120.120(2) Identification and coordination of resources. The identification and coordination of all available resources for early intervention services within the state, including those from federal, state, local, and private sources, consistent with rules 281—120.500(34CFR303) through 281—120.521(34CFR303).

120.120(3) Assignment of financial responsibility. The assignment of financial responsibility in accordance with rules 281—120.500(34CFR303) through 281—120.521(34CFR303).

120.120(4) Procedures concerning timely provision of services. The development of procedures in accordance with rules 281—120.500(34CFR303) through 281—120.521(34CFR303) to ensure that early intervention services are provided to infants and toddlers with disabilities and their families under Part C of the Act in a timely manner, pending the resolution of any disputes among public agencies or EIS providers.

120.120(5) Agency-level dispute resolution. The resolution of intra-agency and interagency disputes in accordance with rules 281—120.500(34CFR303) through 281—120.521(34CFR303).

120.120(6) Methods of establishing financial responsibility. The entry into formal interagency agreements or other written methods of establishing financial responsibility, consistent with rule 281—120.511(34CFR303), that define the financial responsibility of each agency for paying for early intervention services (consistent with state law) and procedures for resolving disputes and that include all additional components necessary to ensure meaningful cooperation and coordination as set forth in rules 281—120.500(34CFR303) through 281—120.521(34CFR303).

281—120.121(34CFR303) Policy for contracting or otherwise arranging for services. Each system must include a policy pertaining to the contracting or making of other arrangements with public or private individuals or agency service providers to provide early intervention services in the state, consistent with the provisions of Part C of the Act, including the contents of the application, and the conditions of the contract or other arrangements. The policy must:

1. Include a requirement that all early intervention services must meet state standards and be consistent with the provisions of this chapter; and
2. Be consistent with the Education Department General Administrative Regulations in 34 CFR Part 80.

281—120.122(34CFR303) Reimbursement procedures. Each system must include procedures for securing the timely reimbursement of funds used under Part C of the Act, in accordance with rules 281—120.500(34CFR303) through 281—120.521(34CFR303).

281—120.123(34CFR303) Procedural safeguards. Each system must include procedural safeguards that meet the requirements of rules 281—120.400(34CFR303) through 281—120.449(34CFR303).

281—120.124(34CFR303) Data collection.

120.124(1) General. Each statewide system must include a system for compiling and reporting timely and accurate data that meets the requirements in subrule 120.124(2) and rules 281—120.700(34CFR303) through 281—120.702(34CFR303) and rules 281—120.720(34CFR303) through 281—120.724(34CFR303).

120.124(2) Required description. The data system required in subrule 120.124(1) must include a description of the process that the state uses, or will use, to compile data on infants or toddlers with disabilities receiving early intervention services under this chapter, including a description of the state's sampling methods, if sampling is used, for reporting the data required by the Secretary under Sections

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616 and 618 of the Act and rules 281—120.700(34CFR303) through 281—120.707(34CFR303) and rules 281—120.720(34CFR303) through 281—120.724(34CFR303).

281—120.125(34CFR303) State interagency coordinating council. Each system must include a state interagency coordinating council meeting the requirements of rules 281—120.600(34CFR303) through 281—120.605(34CFR303).

281—120.126(34CFR303) Early intervention services in natural environments. Each system must include policies and procedures to ensure, consistent with rule 281—120.13(34CFR303) (early intervention services), rule 281—120.26(34CFR303) (natural environments), and subrule 120.344(4) (content of an IFSP), that early intervention services for infants and toddlers with disabilities are provided:

1. To the maximum extent appropriate, in natural environments; and
2. In settings other than the natural environment that are most appropriate, as determined by the parent and the IFSP team, only when early intervention services cannot be achieved satisfactorily in a natural environment.

281—120.127 to 120.199 Reserved.

DIVISION IV
STATE APPLICATION AND ASSURANCES

281—120.200(34CFR303) State application and assurances. Each application must contain the specific state application requirements (including certifications, descriptions, methods, and policies and procedures) required in rules 281—120.201(34CFR303) through 281—120.212(34CFR303) and the assurances required in rules 281—120.221(34CFR303) through 281—120.227(34CFR303).

281—120.201(34CFR303) Designation of lead agency. Each application must include the designation of the department as the lead agency that will be responsible for the administration of funds provided under Part C of the Act.

281—120.202(34CFR303) Certification regarding financial responsibility. Each application must include a certification to the Secretary that the arrangements to establish financial responsibility for the provision of Part C services among appropriate public agencies under rule 281—120.511(34CFR303) and the lead agency's contracts with EIS providers regarding financial responsibility for the provision of Part C services both meet the requirements in rules 281—120.500(34CFR303) through 281—120.521(34CFR303) and are current as of the date of submission of the certification.

281—120.203(34CFR303) Statewide system and description of services. Each application must include the following items:

120.203(1) Description of services. A description of services to be provided under this chapter to infants and toddlers with disabilities and their families through the state's system;

120.203(2) Identification and coordination of resources. The state's policies and procedures regarding the identification and coordination of all available resources within the state from federal, state, local, and private sources as required under Division VII of this chapter and including:

a. Policies or procedures adopted by the state as its system of payments that meet the requirements in rules 281—120.510(34CFR303), 281—120.520(34CFR303), and 281—120.521(34CFR303); and

b. Methods used by the state to implement the requirements in subrule 120.511(2); and

120.203(3) Rigorous definition of developmental delay. The state's rigorous definition of developmental delay, as required under rule 281—120.111(34CFR303).

281—120.204 Reserved.

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281—120.205(34CFR303) Description of use of funds.

120.205(1) General. Each application must include a description of the uses for funds under this chapter for the fiscal year or years covered by the application. The description must be presented separately for the lead agency and the council and include the information required in subrules 120.205(2) through 120.205(5).

120.205(2) Reserved.

120.205(3) Maintenance and implementation activities. Each application must include a description of the nature and scope of each major activity to be carried out under Part C of the Act, consistent with rule 281—120.501(34CFR303), and the approximate amount of funds to be spent for each activity.

120.205(4) Direct services. Each application must include a description of any direct services that the state expects to provide to infants and toddlers with disabilities and their families with funds under this chapter, consistent with rule 281—120.501(34CFR303), and the approximate amount of funds under this chapter to be used for the provision of each direct service.

120.205(5) Activities by other public agencies. If other public agencies are to receive funds under Part C of the Act, the application must include the name of each agency expected to receive funds, the approximate amount of funds each agency will receive, and a summary of the purposes for which the funds will be used.

281—120.206(34CFR303) Referral policies for specific children. Each application must include the state's policies and procedures that require the referral for early intervention services under this chapter of specific children under the age of three, as described in subrule 120.303(2).

281—120.207(34CFR303) Availability of resources. Each application must include a description of the procedure used by the state to ensure that resources are made available under this chapter for all geographic areas within the state.

281—120.208(34CFR303) Public participation policies and procedures.

120.208(1) Application. At least 60 days prior to being submitted to the department, each application for funds (including any policies, procedures, descriptions, methods, certifications, assurances and other information required in the application) must be published in a manner that will ensure circulation throughout the state for at least a 60-day period, with an opportunity for public comment on the application for at least 30 days during that period.

120.208(2) State policies and procedures. Each application must include a description of the policies and procedures used by the state to ensure that, before adopting any new policy or procedure (including any revision to an existing policy or procedure) needed to comply with Part C of the Act and these rules, the lead agency:

- a.* Holds public hearings on the new policy or procedure (including any revision to an existing policy or procedure);
- b.* Provides notice of the hearings held in accordance with paragraph 120.208(2)“a” at least 30 days before the hearings are conducted to enable public participation; and
- c.* Provides an opportunity for the general public, including individuals with disabilities, parents of infants and toddlers with disabilities, EIS providers, and the members of the council, to comment for at least 30 days on the new policy or procedure (including any revision to an existing policy or procedure) needed to comply with Part C of the Act and these rules.

281—120.209(34CFR303) Transition to preschool and other programs.

120.209(1) Application requirements. The department must include the following in its application:

a. A description of the policies and procedures the state will use to ensure a smooth transition for infants and toddlers with disabilities under the age of three and their families from receiving early intervention services under this chapter to:

- (1) Preschool or other appropriate services (for toddlers with disabilities); or
- (2) Exiting the program for infants and toddlers with disabilities.

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b. A description of how the state will meet each of the requirements in subrules 120.209(2) through 120.209(6).

c. An intra-agency agreement between the department's program that administers Part C of the Act and the department's program that administers Section 619 of Part B of the Act (early childhood special education). To ensure a seamless transition between services under Parts C and B of the Act, the intra-agency agreement must address how the department will meet the requirements of subrules 120.209(2) through 120.209(6) (including any policies adopted by the lead agency under 34 CFR §303.401(d) and (e)), subrule 120.344(8), rule 281—41.124(256B,34CFR300), and 281—subrules 41.101(2) and 41.321(6).

d. Any policy the department has adopted under 34 CFR §303.401(d) and (e).

120.209(2) *Notification to the department and appropriate AEA.*

a. The department must ensure that:

(1) Subject to paragraph 120.209(2) "*b*," not fewer than 90 days before the third birthday of the toddler with a disability if that toddler may be eligible for preschool services under Part B of the Act, the public agency responsible for providing Early ACCESS services to the toddler notifies the department and the AEA for the area in which the toddler resides that the toddler on the toddler's third birthday will reach the age of eligibility for services under Part B of the Act, as determined in accordance with state law;

(2) Subject to paragraph 120.209(2) "*b*," if the toddler is determined to be eligible for Early ACCESS services more than 45 but less than 90 days before that toddler's third birthday and if that toddler may be eligible for preschool services under Part B of the Act, the public agency responsible for providing Early ACCESS services to the toddler, as soon as possible after determining the child's eligibility, notifies the department and the AEA for the area in which the toddler with a disability resides that the toddler on the toddler's third birthday will reach the age of eligibility for services under Part B of the Act, as determined in accordance with state law; or

(3) Subject to paragraph 120.209(2) "*b*," if a toddler is referred to Early ACCESS under rules 281—120.302(34CFR303) and 281—120.303(34CFR303) fewer than 45 days before that toddler's third birthday and that toddler may be eligible for preschool services under Part B of the Act, the public agency that would be responsible for determining the child's eligibility under this chapter, with parental consent required under rule 281—120.414(34CFR303), refers the toddler to the department and the AEA for the area in which the toddler resides; however, no agency is required to conduct an evaluation, assessment, or an initial IFSP meeting under these circumstances.

b. The department must ensure that the notification required under subparagraphs 120.209(2) "*a*"(1) and (2) is consistent with any policy that the state has adopted, under 34 CFR §303.401(e), permitting a parent to object to disclosure of personally identifiable information.

120.209(3) *Conference to discuss services.* The department must ensure that:

a. If a toddler with a disability may be eligible for preschool services under Part B of the Act, the public agency responsible for Early ACCESS services, with the approval of the family of the toddler, convenes a conference, among that agency, the family, and the AEA of the toddler's residence not fewer than 90 days—and, at the discretion of all parties, not more than nine months—before the toddler's third birthday to discuss any services the toddler may receive under Part B of the Act; and

b. If the public agency determines that a toddler with a disability is not potentially eligible for preschool services under Part B of the Act, the public agency, with the approval of the family of that toddler, makes reasonable efforts to convene a conference among that agency, the family, and providers of other appropriate services for the toddler to discuss appropriate services that the toddler may receive.

120.209(4) *Transition plan.* The department must ensure that for all toddlers with disabilities:

a. The appropriate public agency reviews the program options for the toddler with a disability for the period from the toddler's third birthday through the remainder of the school year and each family of a toddler with a disability who is served under this chapter is included in the development of the transition plan required under this rule and subrule 120.344(8);

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b. The appropriate public agency establishes a transition plan in the IFSP not fewer than 90 days—and, at the discretion of all parties, not more than nine months—before the toddler's third birthday; and

c. The transition plan in the IFSP includes, consistent with subrule 120.344(8), as appropriate:

(1) Steps for the toddler with a disability and the toddler's family to exit from the Part C program; and

(2) Any transition services that the IFSP team identifies as needed by that toddler and the toddler's family.

120.209(5) *Transition conference and meeting to develop transition plan.* Any conference conducted under subrule 120.209(3) or meeting to develop the transition plan under subrule 120.209(4) (which conference and meeting may be combined into one meeting) must meet the requirements in subrules 120.342(4), 120.342(5), and 120.343(1).

120.209(6) *Applicability of transition requirements.* The transition requirements in subparagraphs 120.209(2) "a"(1) and (2), paragraph 120.209(3) "a," and subrule 120.209(4) apply to all toddlers with disabilities receiving services under this chapter before those toddlers turn age three.

281—120.210(34CFR303) *Coordination with Head Start and Early Head Start, early education, and child care programs.* Each application must contain a description of state efforts to promote collaboration among Head Start and Early Head Start programs under the Head Start Act (42 U.S.C. 9801 et seq.), early education and child care programs, and services under this chapter. The department must participate, consistent with Section 642B(b)(1)(C)(viii) of the Head Start Act, on the state advisory council on early childhood education and care established under the Head Start Act.

281—120.211 Reserved.

281—120.212(34CFR303) *Additional information and assurances.* The department's application shall describe the steps the state is taking to ensure equitable access to, and equitable participation in, the Part C statewide system as required by Section 427(b) of GEPA and shall supply other information and assurances as the Secretary may reasonably require.

281—120.213 to 120.219 Reserved.

281—120.220(34CFR303) *Assurances satisfactory to the Secretary.* The department's application must contain assurances satisfactory to the Secretary that the state has met the requirements in rules 281—120.221(34CFR303) through 281—120.227(34CFR303).

281—120.221(34CFR303) *Expenditure of funds.* The department must ensure that federal funds made available to the state under Section 643 of the Act will be expended in accordance with the provisions of this chapter, including rules 281—120.500(34CFR303) and 281—120.501(34CFR303).

281—120.222(34CFR303) *Payor of last resort.* The department must ensure that it will comply with the requirements in rules 281—120.510(34CFR303) and 281—120.511(34CFR303).

281—120.223(34CFR303) *Control of funds and property.* The department must ensure that the control of funds provided under Part C of the Act, and title to property acquired with those funds, will be in a public agency for the uses and purposes provided in this chapter and that a public agency will administer the funds and property.

281—120.224(34CFR303) *Reports and records.* The department must ensure that it will make reports in the form and containing the information that the Secretary may require and will keep records and afford access to those records as the Secretary may find necessary to ensure compliance with the requirements of this chapter, the correctness and verification of reports, and the proper disbursement of funds provided under this chapter.

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281—120.225(34CFR303) Prohibition against supplanting; indirect costs.

120.225(1) General. The department must provide satisfactory assurance that the federal funds made available under Section 643 of the Act to the state:

- a. Will not be commingled with state funds; and
- b. Will be used so as to supplement the level of state and local funds expended for infants and toddlers with disabilities and their families and in no case to supplant those state and local funds.

120.225(2) Additional information. To meet the requirement in subrule 120.225(1), the total amount of state and local funds budgeted for expenditures in the current fiscal year for early intervention services for children eligible under this chapter and their families must be at least equal to the total amount of state and local funds actually expended for early intervention services for these children and their families in the most recent preceding fiscal year for which the information is available. Allowance may be made for:

- a. A decrease in the number of infants and toddlers who are eligible to receive early intervention services under this chapter; and
- b. Unusually large amounts of funds expended for such long-term purposes as the acquisition of equipment.

120.225(3) Requirement regarding indirect costs.

a. Except as provided in paragraph 120.225(3) "b," the department may not charge indirect costs to its Part C grant.

b. If approved by the department's cognizant federal agency or by the Secretary, the department must charge indirect costs through either:

- (1) A restricted indirect cost rate that meets the requirements in 34 CFR 76.560 through 76.569; or
- (2) A cost allocation plan that meets the non-supplanting requirements in subrule 120.225(2) and 34 CFR Part 76 of EDGAR.

c. In charging indirect costs under paragraph 120.225(3) "b," the department may not charge rent, occupancy, or space maintenance costs directly to the Part C grant, unless those costs are specifically approved in advance by the Secretary.

281—120.226(34CFR303) Fiscal control. The department must ensure that fiscal control and fund accounting procedures will be adopted as necessary to ensure proper disbursement of, and accounting for, federal funds paid under Part C of the Act.

281—120.227(34CFR303) Traditionally underserved groups. The department must ensure that policies and practices have been adopted to ensure that traditionally underserved groups, including minority, low-income, homeless, and rural families and children with disabilities who are wards of the state, are meaningfully involved in the planning and implementation of all the requirements of this chapter and that these families have access to culturally competent services within their local geographical areas.

281—120.228(34CFR303) Subsequent state application and modifications of application.

120.228(1) Subsequent state application. If the state has on file with the Secretary a policy, procedure, method, or assurance that demonstrates that the state meets an application requirement in this chapter, including any policy, procedure, method, or assurance filed under this chapter (as in effect before the date of enactment of the Act, December 3, 2004), the Secretary considers the state to have met that requirement for purposes of receiving a grant under Part C of the Act.

120.228(2) Modification of application. An application submitted by the state that meets the requirements of this chapter remains in effect until the state submits to the Secretary such modifications as the state determines necessary. This rule applies to a modification of an application to the same extent and in the same manner as this subrule applies to the original application.

120.228(3) Modifications required by the Secretary. The Secretary may require the state to modify its application under Part C of the Act to the extent necessary to ensure the state's compliance with Part C of the Act if:

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- a. An amendment is made to the Act or to a federal regulation issued under the Act;
- b. A new interpretation of the Act is made by a federal court or the state's highest court; or
- c. An official finding of noncompliance with federal law or regulations is made with respect to the state.

281—120.229 to 120.299 Reserved.

DIVISION V
CHILD FIND; EVALUATIONS AND ASSESSMENTS; INDIVIDUALIZED FAMILY SERVICE PLANS

281—120.300(34CFR303) General. The statewide comprehensive, coordinated, multidisciplinary, interagency system to provide early intervention services for infants and toddlers with disabilities and their families referenced in rule 281—120.100(34CFR303) must include the following components:

120.300(1) Pre-referral activities. The system must contain pre-referral policies and procedures that include:

- a. A public awareness program as described in rule 281—120.301(34CFR303); and
- b. A comprehensive child find system as described in rule 281—120.302(34CFR303).

120.300(2) Referral activities. The system must contain referral policies and procedures as described in rule 281—120.303(34CFR303).

120.300(3) Post-referral activities. The system must contain post-referral policies and procedures that ensure compliance with the timeline requirements in rule 281—120.310(34CFR303) and include:

- a. Screening, if applicable, as described in rule 281—120.320(34CFR303);
- b. Evaluations and assessments as described in rules 281—120.321(34CFR303) and 281—120.322(34CFR303); and
- c. Development, review, and implementation of IFSPs as described in rules 281—120.340(34CFR303) through 281—120.346(34CFR303).

281—120.301(34CFR303) Public awareness program—information for parents.

120.301(1) Preparation and dissemination. In accordance with rule 281—120.116(34CFR303), the system must include a public awareness program that requires the department to:

- a. Prepare information on the availability of early intervention services under this chapter, and other services, as described in subrule 120.301(2) and disseminate to all primary referral sources (especially hospitals and physicians) the information to be given to parents of infants and toddlers, especially parents with premature infants or infants with other physical risk factors associated with learning or developmental complications; and
- b. Adopt procedures for assisting the primary referral sources described in subrule 120.303(3) in disseminating the information described in subrule 120.301(2) to parents of infants and toddlers with disabilities.

120.301(2) Information to be provided. The information required to be prepared and disseminated under subrule 120.301(1) must include:

- a. A description of the availability of Early ACCESS services under this chapter;
- b. A description of the child find system and how to refer a child under the age of three for an evaluation or early intervention services; and
- c. A central directory, as described in rule 281—120.117(34CFR303).

120.301(3) Information specific to toddlers with disabilities. The public awareness program also must include a requirement that the department provide for informing parents of toddlers with disabilities of the availability of services under Section 619 of the Act not fewer than 90 days prior to the toddler's third birthday.

281—120.302(34CFR303) Comprehensive child find system.

120.302(1) General. The Early ACCESS system must include a comprehensive child find system that:

- a. Is consistent with Part B of the Act (see 34 CFR 300.111);

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b. Includes a system for making referrals to applicable public agencies or EIS providers under this chapter that:

- (1) Includes timelines; and
- (2) Provides for participation by the primary referral sources described in subrule 120.303(3);

c. Ensures rigorous standards for appropriately identifying infants and toddlers with disabilities for early intervention services under this chapter that will reduce the need for future services; and

d. Meets the requirements in subrules 120.302(2) and 120.302(3) and rules 281—120.303(34CFR303), 281—120.310(34CFR303), 281—120.320(34CFR303), and 281—120.321(34CFR303).

120.302(2) *Scope of child find.* The department, as part of the child find system, must ensure that:

a. All infants and toddlers with disabilities in the state who are eligible for early intervention services under this chapter are identified, located, and evaluated, including:

(1) Indian infants and toddlers with disabilities residing on a reservation or settlement geographically located in the state (including coordination, as necessary, with tribes, tribal organizations, and consortia to identify infants and toddlers with disabilities in the state based, in part, on the information provided by them to the department under 34 CFR §303.731(e)(1)); and

(2) Infants and toddlers with disabilities who are homeless, in foster care, and wards of the state; and

(3) Infants and toddlers with disabilities that are referenced in subrule 120.303(2); and

b. An effective method is developed and implemented to identify children who are in need of early intervention services.

120.302(3) *Coordination.*

a. The department, with the assistance of the council, must ensure that the child find system under this chapter:

(1) Is coordinated with all other major efforts to locate and identify children by other state agencies responsible for administering the various education, health, and social service programs relevant to this chapter, including Indian tribes that receive payments under this chapter, and other Indian tribes, as appropriate; and

(2) Is coordinated with the efforts of the:

1. Program authorized under Part B of the Act;

2. Maternal and Child Health program, including the Maternal, Infant, and Early Childhood Home Visiting Program, under Title V of the Social Security Act (MCHB or Title V) (42 U.S.C. 701(a));

3. Early Periodic Screening, Diagnosis, and Treatment (EPSDT) under Title XIX of the Social Security Act (42 U.S.C. 1396(a)(43) and 1396(a)(4)(B));

4. Programs under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15001 et seq.);

5. Head Start Act (including Early Head Start programs under Section 645A of the Head Start Act) (42 U.S.C. 9801 et seq.);

6. Supplemental Security Income program under Title XVI of the Social Security Act (42 U.S.C. 1381);

7. Child protection and child welfare programs, including programs administered by, and services provided through, the foster care agency and the state agency responsible for administering the Child Abuse Prevention and Treatment Act (CAPTA) (42 U.S.C. 5106(a));

8. Child care programs in the state;

9. Programs that provide services under the Family Violence Prevention and Services Act (42 U.S.C. 10401 et seq.);

10. Early Hearing Detection and Intervention (EHDI) systems (42 U.S.C. 280g-1) administered by the Centers for Disease Control (CDC); and

11. Children's Health Insurance Program (CHIP) authorized under Title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.).

b. The department, with the advice and assistance of the council, must take steps to ensure that:

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- (1) There will not be unnecessary duplication of effort by the programs identified in paragraph 120.302(3)“a”; and
- (2) The state will make use of the resources available through each public agency and EIS provider in the state to implement the child find system in an effective manner.

281—120.303(34CFR303) Referral procedures.

120.303(1) General. The child find system described in rule 281—120.302(34CFR303) must include the state’s procedures for use by primary referral sources for referring a child under the age of three to the Part C program. The procedures required in this subrule must:

- a. Provide for referring a child as soon as possible, but in no case more than seven days, after the child has been identified; and
- b. Meet the requirements in subrules 120.303(2) and 120.303(3).

120.303(2) Referral of specific at-risk infants and toddlers. The procedures required in subrule 120.303(1) must provide for requiring the referral of a child under the age of three who:

- a. Is the subject of a substantiated case of child abuse or neglect; or
- b. Is identified as directly affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure.

120.303(3) Primary referral sources. As used in this division, primary referral sources include:

- a. Hospitals, including prenatal and postnatal care facilities;
- b. Physicians;
- c. Parents, including parents of infants and toddlers;
- d. Child care programs and early learning programs;
- e. AEAs, LEAs and schools;
- f. Public health facilities;
- g. Other public health or social service agencies;
- h. Other clinics and health care providers;
- i. Public agencies and staff in the child welfare system, including child protective service and foster care;
- j. Homeless family shelters; and
- k. Domestic violence shelters and agencies.

281—120.304 to 120.309 Reserved.

281—120.310(34CFR303) Post-referral timeline (45 calendar days).

120.310(1) General. Except as provided in subrule 120.310(2), any screening under rule 281—120.320(34CFR303); the initial evaluation and the initial assessments of the child and family under rule 281—120.321(34CFR303); and the initial IFSP meeting under rule 281—120.342(34CFR303) must be completed within 45 calendar days from the date the public agency or EIS provider receives the referral of the child.

120.310(2) Limited exceptions. Subject to subrule 120.310(3), the 45-day timeline described in subrule 120.310(1) does not apply for any period when:

- a. The child or parent is unavailable to complete the screening (if applicable), the initial evaluation, the initial assessments of the child and family, or the initial IFSP meeting due to exceptional family circumstances that are documented in the child’s early intervention records; or
- b. The parent has not provided consent for the screening (if applicable), the initial evaluation, or the initial assessment of the child, despite documented, repeated attempts by the public agency or EIS provider to obtain parental consent.

120.310(3) Duties when limited exceptions occur. The department must develop procedures to ensure that in the event the circumstances described in subrule 120.310(2) exist, the public agency or EIS provider must:

- a. Document in the child’s early intervention records the exceptional family circumstances or repeated attempts by the public agency or EIS provider to obtain parental consent;

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b. Complete the screening (if applicable), the initial evaluation, the initial assessments (of the child and family), and the initial IFSP meeting as soon as possible after the documented exceptional family circumstances described in paragraph 120.310(2) “*a*” no longer exist or parental consent is obtained for the screening (if applicable), the initial evaluation, and the initial assessment of the child; and

c. Develop and implement an interim IFSP, to the extent appropriate and consistent with rule 281—120.345(34CFR303).

120.310(4) Initial family assessment. The initial family assessment must be conducted within the 45-day timeline in subrule 120.310(1) if the parent concurs and even if other family members are unavailable.

281—120.311 to 120.319 Reserved.

281—120.320(34CFR303) Screening procedures.**120.320(1) General.**

a. The department may adopt procedures, consistent with the requirements of this rule, to screen children under the age of three who have been referred to the Part C program to determine whether they are suspected of having a disability under this chapter. If a public agency or EIS provider proposes to screen a child, the agency or EIS provider must:

(1) Provide the parent notice under rule 281—120.421(34CFR303) of the public agency’s or EIS provider’s intent to screen the child to identify whether the child is suspected of having a disability and include in that notice a description of the parent’s right to request an evaluation under rule 281—120.321(34CFR303) at any time during the screening process; and

(2) Obtain parental consent as required in subrule 120.420(1) before conducting the screening procedures.

b. If the parent consents to the screening and the screening or other available information indicates that the child is:

(1) Suspected of having a disability, after notice is provided under rule 281—120.421(34CFR303) and once parental consent is obtained as required in rule 281—120.420(34CFR303), an evaluation and assessment of the child must be conducted under rule 281—120.321(34CFR303); or

(2) Not suspected of having a disability, the public agency or EIS provider must ensure that notice of that determination is provided to the parent under rule 281—120.421(34CFR303), and that the notice describes the parent’s right to request an evaluation.

c. If the parent of the child requests and consents to an evaluation at any time during the screening process, evaluation of the child must be conducted under rule 281—120.321(34CFR303), even if the public agency or EIS provider has determined under subparagraph 120.320(1) “*b*”(2) that the child is not suspected of having a disability.

120.320(2) Definition of screening procedures. As used in this rule, “screening procedures”:

a. Means activities under subrule 120.320(1) that are carried out by, or under the supervision of, a public agency or EIS provider to identify, at the earliest possible age, infants and toddlers suspected of having a disability and in need of early intervention services; and

b. Includes the administration of appropriate instruments by personnel trained to administer those instruments.

120.320(3) Condition for evaluation or early intervention services. For every child under the age of three who is referred to the Part C program or screened in accordance with subrule 120.320(1), the applicable agency is not required to:

a. Provide an evaluation of the child under rule 281—120.321(34CFR303) unless the child is suspected of having a disability or the parent requests an evaluation under paragraph 120.320(1) “*c*”; or

b. Make Early ACCESS services available under this chapter to the child unless a determination is made that the child meets the definition of infant or toddler with a disability under rule 281—120.21(34CFR303).

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120.320(4) Rules of construction.

a. This rule does not apply to activities undertaken by entities not regulated by this chapter, activities that are undertaken by grantees, signatory agencies, Early ACCESS providers prior to referral, activities undertaken after consent for an evaluation and assessment under rule 281—120.321(34CFR303) is received, or to activities taken pursuant to an IFSP.

b. As a general rule, a public agency suspects a child is a child with a disability when the public agency is aware of facts and circumstances that, when considered as a whole, would cause a reasonably prudent public agency to believe that the child's performance might be explained because the child is an eligible individual under this chapter.

281—120.321(34CFR303) Evaluation of the child and assessment of the child and family.

120.321(1) General. The department must ensure that, subject to obtaining parental consent in accordance with subrule 120.420(1), each child under the age of three who is referred for evaluation or early intervention services under this chapter and suspected of having a disability receives:

a. A timely, comprehensive, multidisciplinary evaluation of the child in accordance with subrule 120.321(4) unless eligibility is established in paragraph 120.321(3)“*a*”; and

b. If the child is determined eligible as an infant or toddler with a disability as defined in rule 281—120.21(34CFR303):

(1) A multidisciplinary assessment of the unique strengths and needs of that infant or toddler and the identification of services appropriate to meet those needs;

(2) A family-directed assessment of the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of that infant or toddler. The assessments of the child and family are described in subrule 120.321(5), and these assessments may occur simultaneously with the evaluation, provided that the requirements of subrule 120.321(4) are met.

120.321(2) Definitions. As used in this chapter:

a. “Evaluation” means the procedures used by qualified personnel to determine a child's initial and continuing eligibility under this chapter, consistent with the definition of infant or toddler with a disability in rule 281—120.21(34CFR303);

b. “Initial evaluation” means the child's evaluation to determine the child's initial eligibility under this chapter;

c. “Assessment” means the ongoing procedures used by qualified personnel to identify the child's unique strengths and needs and the early intervention services appropriate to meet those needs throughout the period of the child's eligibility under this chapter and includes the assessment of the child, consistent with paragraph 120.321(5)“*a*” and the assessment of the child's family, consistent with paragraph 120.321(5)“*b*”; and

d. “Initial assessment” means the assessment of the child and the family assessment conducted prior to the child's first IFSP meeting.

120.321(3) General procedures.

a. A child's medical and other records may be used to establish eligibility (without conducting an evaluation of the child) under this chapter if those records indicate that the child's level of functioning in one or more of the developmental areas identified in subrule 120.21(1) constitutes a developmental delay or that the child otherwise meets the criteria for an infant or toddler with a disability under rule 281—120.21(34CFR303). If the child's Part C eligibility is established under this paragraph, the public agency or EIS provider must conduct assessments of the child and family in accordance with subrule 120.321(5).

b. Qualified personnel must use informed clinical opinion when conducting an evaluation and assessment of the child. In addition, the department must ensure that informed clinical opinion may be used as an independent basis to establish a child's eligibility under this chapter even when other instruments do not establish eligibility; however, in no event may informed clinical opinion be used to negate the results of evaluation instruments used to establish eligibility under subrule 120.321(4).

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c. All evaluations and assessments of the child and family must be conducted by qualified personnel, in a nondiscriminatory manner, and selected and administered so as not to be racially or culturally discriminatory.

d. Unless clearly not feasible to do so, all evaluations and assessments of a child must be conducted in the native language of the child.

e. Unless clearly not feasible to do so, family assessments must be conducted in the native language of the family members being assessed.

120.321(4) *Procedures for evaluation of the child.* In conducting an evaluation, no single procedure may be used as the sole criterion for determining a child's eligibility under this chapter. Procedures must include:

a. Administering an evaluation instrument;

b. Taking the child's history (including interviewing the parent);

c. Identifying the child's level of functioning in each of the developmental areas in subrule 120.21(1);

d. Gathering information from other sources such as family members, other caregivers, medical providers, social workers, and educators, if necessary, to understand the full scope of the child's unique strengths and needs; and

e. Reviewing medical, educational, or other records.

120.321(5) *Procedures for assessment of the child and family.*

a. An assessment of each infant or toddler with a disability must be conducted by qualified personnel in order to identify the child's unique strengths and needs and the early intervention services appropriate to meet those needs. The assessment of the child must include the following:

- (1) A review of the results of the evaluation conducted under subrule 120.321(4);
- (2) Personal observations of the child; and
- (3) The identification of the child's needs in each of the developmental areas in subrule 120.21(1).

b. A family-directed assessment must be conducted by qualified personnel in order to identify the family's resources, priorities, and concerns and the supports and services necessary to enhance the family's capacity to meet the developmental needs of the family's infant or toddler with a disability. The family-directed assessment must:

- (1) Be voluntary on the part of each family member participating in the assessment;
- (2) Be based on information obtained through an assessment tool and also through an interview with those family members who elect to participate in the assessment; and
- (3) Include the family's description of its resources, priorities, and concerns related to enhancing the child's development.

281—120.322(34CFR303) *Determination that a child is not eligible.* If, based on the evaluation conducted under rule 281—120.321(34CFR303), the applicable agency determines that a child is not eligible under this chapter, the agency must provide the parent with prior written notice required in rule 281—120.421(34CFR303), and include in the notice information about the parent's right to dispute the eligibility determination through dispute resolution mechanisms under rule 281—120.430(34CFR303), such as requesting a due process hearing or mediation or filing a state complaint.

281—120.323 to 120.339 Reserved.

281—120.340(34CFR303) *Individualized family service plan—general.* For each infant or toddler with a disability, the department must ensure the development, review, and implementation of an individualized family service plan developed by a multidisciplinary team, which includes the parent, that is consistent with the definition of individualized family service plan in rule 281—120.20(34CFR303) and meets the requirements in rules 281—120.342(34CFR303) through 281—120.346(34CFR303).

281—120.341 Reserved.

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281—120.342(34CFR303) Procedures for IFSP development, review, and evaluation.

120.342(1) *Meeting to develop initial IFSP—timelines.* For a child referred to the Early ACCESS system and determined to be eligible under this chapter as an infant or toddler with a disability, a meeting to develop the initial IFSP must be conducted within the 45-day time period described in rule 281—120.310(34CFR303).

120.342(2) *Periodic review.*

a. A review of the IFSP for a child and the child's family must be conducted every six months, or more frequently if conditions warrant, or if the family requests such a review. The purpose of the periodic review is to determine:

(1) The degree to which progress toward achieving the results or outcomes identified in the IFSP is being made; and

(2) Whether modification or revision of the results, outcomes, or early intervention services identified in the IFSP is necessary.

b. The review may be carried out by a meeting or by another means that is acceptable to the parents and other participants.

120.342(3) *Annual meeting to evaluate the IFSP.* A meeting must be conducted on at least an annual basis to evaluate and revise, as appropriate, the IFSP for a child and the child's family. The results of any current evaluations and other information available from the assessments of the child and family conducted under rule 281—120.321(34CFR303) must be used in determining the early intervention services that are needed and will be provided.

120.342(4) *Accessibility and convenience of meetings.*

a. IFSP meetings must be conducted:

(1) In settings and at times that are convenient for the family; and

(2) In the native language of the family or other mode of communication used by the family, unless it is clearly not feasible to do so.

b. Meeting arrangements must be made with, and written notice provided to, the family and other participants early enough before the meeting date to ensure that they will be able to attend.

120.342(5) *Parental consent.* The contents of the IFSP must be fully explained to the parents and informed written consent, as described in rule 281—120.7(34CFR303), must be obtained, as required in subrule 120.420(1), prior to the provision of early intervention services described in the IFSP. Each early intervention service must be provided as soon as possible after the parent provides consent for that service, as required in subrule 120.344(6).

281—120.343(34CFR303) IFSP team meeting and periodic review.

120.343(1) *Initial and annual IFSP team meeting.*

a. Each initial meeting and each annual IFSP team meeting to evaluate the IFSP must include the following participants:

(1) The parent or parents of the child.

(2) Other family members, as requested by the parent, if feasible to do so.

(3) An advocate or person outside of the family, if the parent requests that the person participate.

(4) The service coordinator designated by the public agency to be responsible for implementing the IFSP.

(5) A person or persons directly involved in conducting the evaluations and assessments in rule 281—120.321(34CFR303).

(6) As appropriate, persons who will be providing early intervention services under this chapter to the child or family.

b. If a person listed in subparagraph 120.343(1) "a"(5) is unable to attend a meeting, arrangements must be made for the person's involvement through other means, including one of the following:

(1) Participating in a telephone conference call.

(2) Having a knowledgeable authorized representative attend the meeting.

(3) Making pertinent records available at the meeting.

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120.343(2) Periodic review. Each periodic review under subrule 120.342(2) must provide for the participation of persons in subparagraphs 120.343(1) “a”(1) through (4). If conditions warrant, provisions must be made for the participation of other representatives identified in subrule 120.343(1).

281—120.344(34CFR303) Content of an IFSP.

120.344(1) Information about the child’s status. The IFSP must include a statement of the infant or toddler with a disability’s present levels of physical development (including vision, hearing, and health status), cognitive development, communication development, social or emotional development, and adaptive development based on the information from that child’s evaluation and assessments conducted under rule 281—120.321(34CFR303).

120.344(2) Family information. With the concurrence of the family, the IFSP must include a statement of the family’s resources, priorities, and concerns related to enhancing the development of the child as identified through the assessment of the family under paragraph 120.321(5) “b.”

120.344(3) Results or outcomes. The IFSP must include a statement of the measurable results or measurable outcomes expected to be achieved for the child (including preliteracy and language skills, as developmentally appropriate for the child) and family, and the criteria, procedures, and timelines used to determine:

a. The degree to which progress toward achieving the results or outcomes identified in the IFSP is being made; and

b. Whether modifications or revisions of the expected results or outcomes, or early intervention services identified in the IFSP are necessary.

120.344(4) Early intervention services.

a. The IFSP must include a statement of the specific early intervention services, based on peer-reviewed research (to the extent practicable), that are necessary to meet the unique needs of the child and the family to achieve the results or outcomes identified in subrule 120.344(3), including:

(1) The length, duration, frequency, intensity, and method of delivering the early intervention services;

(2) A statement that each early intervention service is provided in the natural environment for that child or service to the maximum extent appropriate, consistent with paragraph 120.13(1) “h,” rule 281—120.26(34CFR303), and rule 281—120.126(34CFR303), or, subject to subparagraph 120.344(4) “a”(3), a justification as to why an early intervention service will not be provided in the natural environment;

(3) The determination of the appropriate setting for providing early intervention services to an infant or toddler with a disability, including any justification for not providing a particular early intervention service in the natural environment for that infant or toddler with a disability and service, must be:

1. Made by the IFSP team (which includes the parent and other team members);

2. Consistent with the provisions in paragraph 120.13(1) “h,” rule 281—120.26(34CFR303), and rule 281—120.126(34CFR303); and

3. Based on the child’s outcomes identified by the IFSP team in subrule 120.344(3);

(4) The location of the early intervention services; and

(5) The payment arrangements, if any.

b. As used in this subrule:

(1) “Frequency and intensity” means the number of days or sessions that a service will be provided and whether the service is provided on an individual or group basis.

(2) “Method” means how a service is provided.

(3) “Length” means the length of time the service is provided during each session of that service (such as an hour or other specified time period).

(4) “Duration” means projecting when a given service will no longer be provided (such as when the child is expected to achieve the results or outcomes in the child’s IFSP).

(5) “Location” means the actual place or places where a service will be provided.

120.344(5) Other services. To the extent appropriate, the IFSP also must:

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a. Identify medical and other services that the child or family needs or is receiving through other sources, but that are neither required nor funded under this chapter; and

b. If those services are not currently being provided, include a description of the steps the service coordinator or family may take to assist the child and family in securing those other services.

120.344(6) *Dates and duration of services.* The IFSP must include:

a. The projected date for the initiation of each early intervention service in subrule 120.344(4), which date must be as soon as possible after the parent consents to the service, as required in subrules 120.342(5) and 120.420(1); and

b. The anticipated duration of each service.

120.344(7) *Service coordinator.* The IFSP must include the name of the service coordinator from the profession most relevant to the child's or family's needs (or who is otherwise qualified to carry out all applicable responsibilities under this chapter), who will be responsible for implementing the early intervention services identified in a child's IFSP, including transition services, and coordination with other agencies and persons. In meeting the requirements of this subrule, the term "profession" includes "service coordination."

120.344(8) *Transition from Part C services.*

a. The IFSP must include the steps and services to be taken to support the smooth transition of the child, in accordance with rule 281—120.209(34CFR303), from Part C services to:

(1) Preschool services under Part B of the Act, to the extent that those services are appropriate; or

(2) Other appropriate services.

b. The steps required in paragraph 120.344(8)"*a*" must include:

(1) Discussions with, and training of, parents, as appropriate, regarding future placements and other matters related to the child's transition;

(2) Procedures to prepare the child for changes in service delivery, including steps to help the child adjust to, and function in, a new setting;

(3) Confirmation that child find information about the child has been transmitted to the AEA or other relevant agency, in accordance with subrule 120.209(2) and, with parental consent if required under rule 281—120.414(34CFR303), transmission of additional information needed by the AEA to ensure continuity of services from the Part C program to the Part B program, including a copy of the most recent evaluation and assessments of the child and the family and most recent IFSP developed in accordance with rules 281—120.340(34CFR30) through 281—120.345(34CFR303); and

(4) Identification of transition services and other activities that the IFSP team determines are necessary to support the transition of the child.

281—120.345(34CFR303) *Interim IFSPs—provision of services before evaluations and assessments are completed.* Early intervention services for an eligible child and the child's family may commence before the completion of the evaluation and assessments in rule 281—120.321(34CFR303), if the following conditions are met:

120.345(1) Parental consent is obtained.

120.345(2) An interim IFSP is developed that includes the name of the service coordinator who will be responsible, consistent with subrule 120.344(7), for implementing the interim IFSP and coordinating with other agencies and persons and includes the early intervention services that have been determined to be needed immediately by the child and the child's family.

120.345(3) Evaluations and assessments are completed within the 45-day timeline in rule 281—120.310(34CFR303).

281—120.346(34CFR303) *Responsibility and accountability.* Each public agency or EIS provider who has a direct role in the provision of early intervention services is responsible for making a good-faith effort to assist each eligible child in achieving the outcomes in the child's IFSP. However, Part C of the Act does not require that any public agency or EIS provider be held accountable if an eligible child does not achieve the growth projected in the child's IFSP, so long as the child's IFSP was reasonably calculated to confer benefit and was implemented.

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281—120.347 to 120.399 Reserved.

DIVISION VI
PROCEDURAL SAFEGUARDS

281—120.400(34CFR303) General responsibility of lead agency for procedural safeguards. Subject to subrule 120.400(3), the department must:

120.400(1) Establish or adopt the procedural safeguards that meet the requirements of this division, including the provisions on confidentiality in rules 281—120.401(34CFR303) through 281—120.417(34CFR303), parental consent and notice in rules 281—120.420(34CFR303) and 281—120.421(34CFR303), surrogate parents in rule 281—120.422(34CFR303), and dispute resolution procedures in rule 281—120.430(34CFR303);

120.400(2) Ensure the effective implementation of the safeguards by each participating agency (including the lead agency and EIS providers) in the statewide system that is involved in the provision of early intervention services under this chapter; and

120.400(3) Make available to parents an initial copy of the child's early intervention record, at no cost to the parents.

281—120.401(34CFR303) Confidentiality and opportunity to examine records.

120.401(1) General. The state must ensure that the parents of a child referred under this chapter are afforded the right to confidentiality of personally identifiable information, including the right to written notice of, and written consent to, the exchange of that information among agencies, consistent with federal and state laws.

120.401(2) Confidentiality procedures. As required under Sections 617(c) and 642 of the Act, rules 281—120.401(34CFR303) through 281—120.417(34CFR303) ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained pursuant to this chapter by the Secretary and by participating agencies, including the department and EIS providers, in accordance with the protections under the Family Educational Rights and Privacy Act (FERPA) in 20 U.S.C. 1232g and 34 CFR Part 99. The state must have procedures in effect to ensure that:

a. Participating agencies (including the lead agency and EIS providers) comply with the Part C confidentiality procedures in rules 281—120.401(34CFR303) through 281—120.417(34CFR303); and

b. The parents of infants or toddlers who are referred to or receive services under this chapter are afforded the opportunity to inspect and review all Part C early intervention records about the child and the child's family that are collected, maintained, or used under this chapter, including records related to evaluations and assessments, screening, eligibility determinations, development and implementation of IFSPs, provision of early intervention services, individual complaints involving the child, or any part of the child's early intervention record under this chapter.

120.401(3) Applicability and timeframe of procedures. The confidentiality procedures described in subrule 120.401(2) apply to the personally identifiable information of a child and the child's family that:

a. Is contained in early intervention records collected, used, or maintained under this chapter by the department or an EIS provider; and

b. Applies from the point in time when the child is referred for early intervention services under this chapter until the later of when the participating agency is no longer required to maintain or no longer maintains that information under applicable federal and state laws.

120.401(4) Disclosure of information: transition from Part C to Part B.

a. The department shall disclose to the AEA where the child resides, in accordance with subrule 120.209(2), the following personally identifiable information under the Act:

(1) A child's name.

(2) A child's date of birth.

(3) Parent contact information (including parents' names, addresses, and telephone numbers).

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b. The information described in this subrule is needed to enable the department, as well as LEAs and AEAs under Part B of the Act, to identify all children potentially eligible for services under Part B of the Act.

281—120.402(34CFR303) Confidentiality. The Secretary takes appropriate action, in accordance with Section 444 of GEPA, to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected, maintained, or used by the Secretary and by all lead agencies and EIS providers pursuant to Part C of the Act and consistent with rules 281—120.401(34CFR303) through 281—120.417(34CFR303). Rules 281—120.401(34CFR303) through 281—120.417(34CFR303) ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained pursuant to this chapter by the Secretary and by participating agencies, including state lead agencies and EIS providers, in accordance with the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, and 34 CFR Part 99.

281—120.403(34CFR303) Definitions. The following definitions apply to rules 281—120.402(34CFR303) through 281—120.417(34CFR303) in addition to the definition of “personally identifiable information” in rule 281—120.29(34CFR303) and the definition of “disclosure” in 34 CFR 99.3:

120.403(1) “Destruction” means physical destruction of the record or ensuring that personal identifiers are removed from a record so that the record is no longer personally identifiable under rule 281—120.29(34CFR303).

120.403(2) “Early intervention records” mean all records regarding a child that are required to be collected, maintained, or used under Part C of the Act and the rules in this chapter.

120.403(3) “Participating agency” means any individual, agency, entity, or institution that collects, maintains, or uses personally identifiable information to implement the requirements in Part C of the Act and the rules in this chapter with respect to a particular child. A participating agency includes the department and EIS providers and any individual or entity that provides any Part C services (including service coordination, evaluations and assessments), but does not include primary referral sources, or public agencies (such as the state Medicaid or CHIP program) or private entities (such as private insurance companies) that act solely as funding sources for Part C services.

281—120.404(34CFR303) Notice to parents. The relevant agency must give notice when a child is referred under Part C of the Act that is adequate to fully inform parents about the requirements in rule 281—120.402(34CFR303), including:

120.404(1) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the state intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;

120.404(2) A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information;

120.404(3) A description of all the rights of parents and children regarding this information, including their rights under the Part C confidentiality provisions in rules 281—120.401(34CFR303) through 281—120.417(34CFR303); and

120.404(4) A description of the extent that the notice is provided in the native languages of the various population groups in the state.

281—120.405(34CFR303) Access rights.

120.405(1) General. Each participating agency must permit parents to inspect and review any early intervention records relating to their children that are collected, maintained, or used by the agency under this chapter. The agency must comply with a parent’s request to inspect and review records without unnecessary delay and before any meeting regarding an IFSP, or any hearing pursuant to

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subrule 120.430(4) and rules 281—120.435(34CFR303) through 281—120.439(34CFR303), and in no case more than ten days after the request is made.

120.405(2) *Inspect and review.* The right to inspect and review early intervention records under this rule includes:

a. The right to a response from the participating agency to reasonable requests for explanations and interpretations of the early intervention records;

b. The right to request that the participating agency provide copies of the early intervention records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

c. The right to have a representative of the parent inspect and review the early intervention records.

120.405(3) *Rule of construction.* An agency may presume that the parent has authority to inspect and review records relating to the parent's child unless the agency has been provided documentation that the parent does not have the authority under applicable state laws governing such matters as custody, foster care, guardianship, separation, and divorce.

281—120.406(34CFR303) *Record of access.* Each participating agency must keep a record of parties obtaining access to early intervention records collected, maintained, or used under Part C of the Act (except access by parents and authorized representatives and employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the early intervention records.

281—120.407(34CFR303) *Records on more than one child.* If any early intervention record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.

281—120.408(34CFR303) *List of types and locations of information.* Each participating agency must provide parents, on request, a list of the types and locations of early intervention records collected, maintained, or used by the agency.

281—120.409(34CFR303) *Fees for records.*

120.409(1) *General.* Each participating agency may charge a fee for copies of records that are made for parents under this chapter if the fee does not effectively prevent the parents from exercising their right to inspect and review those records, except as provided in subrule 120.409(3).

120.409(2) *No fees to search or retrieve.* A participating agency may not charge a fee to search for or to retrieve information under this chapter.

120.409(3) *Copies of certain documents at no cost.* A participating agency must provide at no cost to parents a copy of each evaluation, assessment of the child, family assessment, and IFSP as soon as possible after each IFSP meeting.

281—120.410(34CFR303) *Amendment of records at a parent's request.*

120.410(1) *Parent permitted to request amendment.* A parent who believes that information in the early intervention records collected, maintained, or used under this chapter is inaccurate, misleading, or violates the privacy or other rights of the child or parent may request that the participating agency that maintains the information amend the information.

120.410(2) *Agency to act on parent's request.* The participating agency must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

120.410(3) *Agency to inform parent of hearing rights.* If the participating agency refuses to amend the information in accordance with the request, the participating agency must inform the parent of the refusal and advise the parent of the right to a hearing under rule 281—120.411(34CFR303).

281—120.411(34CFR303) *Opportunity for a hearing.* The participating agency must, on request, provide parents with the opportunity for a hearing to challenge information in their child's early

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intervention records to ensure that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child or parents. A parent may request a due process hearing under the procedures in subrule 120.430(4), provided that such hearing procedures meet the requirements of the hearing procedures in rule 281—120.413(34CFR303), or may request a hearing directly under rule 281—120.413(34CFR303).

281—120.412(34CFR303) Result of hearing.

120.412(1) *Information to be amended.* If, as a result of the hearing, the participating agency decides that the information is inaccurate, misleading or in violation of the privacy or other rights of the child or parent, the participating agency must amend the information accordingly and so inform the parent in writing.

120.412(2) *Information not to be amended.* If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or in violation of the privacy or other rights of the child or parent, the agency must inform the parent of the right to place in the early intervention records the agency maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

120.412(3) *Explanation placed in records.* Any explanation placed in the early intervention records of the child under this rule must be maintained by the agency as part of the early intervention records of the child as long as the record or contested portion is maintained by the agency. If the early intervention records of the child or the contested portion are disclosed by the agency to any party, the explanation must also be disclosed to the party.

281—120.413(34CFR303) Hearing procedures. A hearing held under rule 281—120.411(34CFR303) must be conducted according to the procedures under 34 CFR 99.22.

281—120.414(34CFR303) Consent prior to disclosure or use.

120.414(1) *General.* Except as provided in subrule 120.414(2), prior parental consent must be obtained before personally identifiable information is:

a. Disclosed to anyone other than authorized representatives, officials, or employees of participating agencies collecting, maintaining, or using the information under this chapter, subject to subrule 120.414(2); or

b. Used for any purpose other than meeting a requirement of this chapter.

120.414(2) *Exceptions.* The department or other participating agency may not disclose personally identifiable information, as defined in rule 281—120.29(34CFR303), to any party except participating agencies (including the department and EIS providers) that are part of the state's Part C system without parental consent unless authorized to do so under:

a. Subrules 120.401(1) and 120.209(2); or

b. One of the exceptions enumerated in 34 CFR 99.31 (where applicable to Part C), which are expressly adopted to apply to Part C through this reference. In applying the exceptions in 34 CFR 99.31 to this chapter, participating agencies must also comply with the pertinent conditions in 34 CFR 99.32, 99.33, 99.34, 99.35, 99.36, 99.38, and 99.39. In applying these provisions in 34 CFR Part 99 to Part C, the reference to:

(1) 34 CFR 99.30 means subrule 120.414(1);

(2) "Education records" means early intervention records under subrule 120.403(2);

(3) "Educational" means early intervention under this chapter;

(4) "Educational agency or institution" means the participating agency under subrule 120.403(3);

(5) "School officials and officials of another school or school system" means qualified personnel or service coordinators under this chapter;

(6) "State and local educational authorities" means the department and EIS providers and grantees;

and

(7) "Student" means child under this chapter.

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120.414(3) Policies and procedures regarding refusal to provide consent. The department must provide policies and procedures to be used when a parent refuses to provide consent under this rule (such as a meeting to explain to parents how their failure to consent affects the ability of their child to receive services under this chapter), provided that those procedures do not override a parent's right to refuse consent under rule 281—120.420(34CFR303).

281—120.415(34CFR303) Safeguards. Each participating agency must protect the confidentiality of personally identifiable information at the collection, maintenance, use, storage, disclosure, and destruction stages. One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information. All persons collecting or using personally identifiable information must receive training or instruction regarding the state's policies and procedures under rules 281—120.401(34CFR303) through 281—120.417(34CFR303) and 34 CFR Part 99. Each participating agency must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

281—120.416(34CFR303) Destruction of information.

120.416(1) Notification to parent. The participating agency must inform parents when personally identifiable information collected, maintained, or used under this chapter is no longer needed to provide services to the child under Part C of the Act, the GEPA provisions in 20 U.S.C. 1232f, and EDGAR, 34 CFR Parts 76 and 80.

120.416(2) Mandatory and permissive destruction of personally identifiable information. Subject to subrule 120.416(1), the information must be destroyed at the request of the parents. However, a permanent record of a child's name, date of birth, parent contact information (including address and telephone number), names of service coordinator(s) and EIS provider(s), and exit data (including year and age upon exit and any programs entered into upon exiting) may be maintained without time limitation.

120.416(3) Rule of construction—“no longer needed to provide services.” For purposes of this rule, “no longer needed to provide services” means that a record is no longer relevant to the provision of Early ACCESS services and is no longer needed for accountability and audit purposes. At a minimum, a record needed for accountability and audit purposes must be retained for five years after completion of the activity for which funds were used.

281—120.417(34CFR303) Enforcement. The department must have in effect the policies and procedures, including sanctions and the right to file a complaint under rules 281—120.432(34CFR303) through 281—120.434(34CFR303), that the department uses to ensure that its policies and procedures, consistent with rules 281—120.401(34CFR303) through 281—120.417(34CFR303), are followed and that the requirements of the Act and the rules in this chapter are met.

281—120.418 and 120.419 Reserved.

281—120.420(34CFR303) Parental consent and ability to decline services.

120.420(1) General. The relevant agency must ensure parental consent is obtained before:

- a. Administering screening procedures under rule 281—120.320(34CFR303) that are used to determine whether a child is suspected of having a disability;
- b. All evaluations and assessments of a child are conducted under rule 281—120.321(34CFR303);
- c. Early intervention services are provided to a child under this chapter;
- d. Public benefits or insurance or private insurance is used if such consent is required under rule 281—120.520(34CFR303); and
- e. Disclosure of personally identifiable information consistent with rule 281—120.414(34CFR303).

120.420(2) Parent refusal to consent. If a parent does not give consent under paragraph 120.420(1) “a,” “b,” or “c,” the agency must make reasonable efforts to ensure that the parent:

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a. Is fully aware of the nature of the evaluation and assessment of the child or early intervention services that may be available; and

b. Understands that the child will not be able to receive the evaluation, assessment, or early intervention services unless consent is given.

120.420(3) *Due process procedures unavailable.* The agency may not use the due process hearing procedures under this chapter to challenge a parent's refusal to provide any consent that is required under subrule 120.420(1).

120.420(4) *Parent rights.* The parents of an infant or toddler with a disability:

a. Determine whether they, their infant or toddler with a disability, or other family members will accept or decline any Early ACCESS service under this chapter at any time, in accordance with state law; and

b. May decline a service after first accepting it, without jeopardizing other early intervention services under this chapter.

281—120.421(34CFR303) Prior written notice and procedural safeguards notice.

120.421(1) *General.* Prior written notice must be provided to parents a reasonable time before an agency or an EIS provider proposes, or refuses, to initiate or change the identification, evaluation, or placement of the parents' infant or toddler or the provision of early intervention services to the infant or toddler with a disability and that infant's or toddler's family.

120.421(2) *Content of notice.* The notice must be in sufficient detail to inform parents about:

a. The action that is being proposed or refused;

b. The reasons for taking the action; and

c. All procedural safeguards that are available under this chapter, including a description of mediation in rule 281—120.431(34CFR303), how to file a state complaint in rules 281—120.432(34CFR303) through 281—120.434(34CFR303) and a due process complaint in the provisions adopted under subrule 120.430(4), and any timelines under those procedures.

120.421(3) *Native language.*

a. The notice must be:

(1) Written in language understandable to the general public; and

(2) Provided in the native language, as defined in rule 281—120.25(34CFR303), of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

b. If the native language or other mode of communication of the parent is not a written language, the public agency or designated EIS provider must take steps to ensure that:

(1) The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;

(2) The parent understands the notice; and

(3) There is written evidence that the requirements of this subrule have been met.

281—120.422(34CFR303) Surrogate parents.

120.422(1) *General.* The department or other public agency must ensure that the rights of a child are protected when:

a. No parent (as defined in rule 281—120.27(34CFR303)) can be identified;

b. The department or AEA, after reasonable efforts, cannot locate a parent; or

c. The child is a ward of the state under the laws of the state.

120.422(2) *Duty of other public agencies.*

a. The duty of the AEA under subrule 120.422(1) includes the assignment of an individual to act as a surrogate for the parent. This assignment process must include a method for:

(1) Determining whether a child needs a surrogate parent; and

(2) Assigning a surrogate parent to the child.

b. In implementing the provisions under this rule for children who are wards of the state or placed in foster care, the AEA must consult with the public agency that has been assigned care of the child.

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120.422(3) *Wards of the state.* In the case of a child who is a ward of the state, the surrogate parent, instead of being appointed by the AEA under subrule 120.422(2), may be appointed by the judge presiding over the infant's or toddler's case provided that the surrogate parent meets the requirements in subrules 120.422(4) and 120.422(5).

120.422(4) *Criteria for selection of surrogate parents.*

a. The AEA may select a surrogate parent in any way permitted under state law.

b. The AEA must ensure that a person selected as a surrogate parent:

(1) Is not an employee of the department or any other public agency or EIS provider that provides early intervention services, education, care, or other services to the child or any family member of the child;

(2) Has no personal or professional interest that conflicts with the interest of the child the person represents; and

(3) Has knowledge and skills that ensure adequate representation of the child.

120.422(5) *Nonemployee requirement; compensation.* A person who is otherwise qualified to be a surrogate parent under subrule 120.422(4) is not an employee of the agency solely because the person is paid by the agency to serve as a surrogate parent.

120.422(6) *Surrogate parent responsibilities.* The surrogate parent has the same rights as a parent for all purposes under this chapter.

120.422(7) *Department responsibility.* The department must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a public agency determines that the child needs a surrogate parent.

281—120.423 to 120.429 Reserved.

281—120.430(34CFR303) State dispute resolution options.

120.430(1) *General.* Each statewide system must include written procedures for the timely administrative resolution of complaints through mediation, state complaint procedures, and due process hearing procedures, described in subrules 120.430(2) through 120.430(6).

120.430(2) *Mediation.* The department must make available to parties to disputes involving any matter under this chapter the opportunity for mediation that meets the requirements in rule 281—120.431(34CFR303).

120.430(3) *State complaint procedures.* The department must adopt written state complaint procedures that meet the requirements in rules 281—120.432(34CFR303) through 281—120.434(34CFR303) to resolve any state complaints filed by any party regarding any violation of this chapter.

120.430(4) *Due process hearing procedures.* The department must adopt written due process hearing procedures to resolve complaints with respect to a particular child regarding any matter identified in subrule 120.421(1). The department adopts the Part C due process hearing procedures under Section 639 of the Act.

120.430(5) *Status of a child during the pendency of a due process complaint.* During the pendency of any proceeding involving a due process complaint under subrule 120.430(4), unless the agency and parents of an infant or toddler with a disability otherwise agree, the child must continue to receive the appropriate early intervention services in the setting identified in the IFSP that is consented to by the parents. If the due process complaint under subrule 120.430(4) involves an application for initial services under Part C of the Act, the child must receive those services that are not in dispute.

120.430(6) *Status of a child during the pendency of mediation.* During the pendency of any request for mediation under subrule 120.430(2) and for ten days after any such mediation conference at which no agreement is reached, unless the agency and the parents of the child agree otherwise, the child involved in any such mediation conference must continue to receive the appropriate early intervention services identified in the IFSP in the setting that is consented to by the parents. If the mediation involves an application for initial services under Part C of the Act, the child must receive those services that are not in dispute.

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281—120.431(34CFR303) Mediation.

120.431(1) General. The department must ensure that procedures are established and implemented to allow parties to disputes involving any matter under this chapter, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process at any time.

120.431(2) Requirements. The procedures must meet the following requirements:

a. The procedures must ensure that the mediation process:

- (1) Is voluntary on the part of the parties;
- (2) Is not used to deny or delay a parent's right to a due process hearing, or to deny any other rights afforded under Part C of the Act; and
- (3) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

b. The department must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of early intervention services. The department must select mediators on a random, rotational, or other impartial basis.

c. The department must bear the cost of the mediation process, including the costs of meetings described in subrule 120.431(4).

d. Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.

e. If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that:

- (1) States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and
- (2) Is signed by both the parent and a representative of the lead agency who has the authority to bind such agency.

f. A written, signed mediation agreement under this subrule is enforceable in any state court of competent jurisdiction or in a district court of the United States.

g. Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any federal court or state court of a state receiving assistance under Part C of the Act.

120.431(3) Impartiality of mediator.

a. An individual who serves as a mediator under this chapter:

- (1) May not be an employee of the department or an EIS provider that is involved in the provision of early intervention services or other services to the child; and
- (2) Must not have a personal or professional interest that conflicts with the person's objectivity.

b. An individual who otherwise qualifies as a mediator is not an employee of the department or an early intervention provider solely because the individual is paid by the agency or provider to serve as a mediator.

120.431(4) Meeting to encourage mediation. The department may establish procedures to offer to parents and EIS providers that choose not to use the mediation process an opportunity to meet, at a time and location convenient to the parents, with a disinterested party:

a. Who is under contract with an appropriate alternative dispute resolution entity or a parent training and information center or community parent resource center in the state established under Section 671 or 672 of the Act; and

b. Who would explain the benefits of, and encourage the use of, the mediation process to the parents.

281—120.432(34CFR303) Adoption of state complaint procedures.

120.432(1) General. The department must adopt written procedures for:

a. Resolving any complaint, including a complaint filed by an organization or individual from another state, that meets the requirements in rule 281—120.434(34CFR303) by providing for the filing of a complaint with the department; and

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b. Widely disseminating to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, and other appropriate entities, the procedures under rules 281—120.432(34CFR303) through 281—120.434(34CFR303).

120.432(2) Remedies for denial of appropriate services. In resolving a complaint in which the department has found a failure to provide appropriate services, the department, pursuant to its general supervisory authority under Part C of the Act, must address:

a. The failure to provide appropriate services, including corrective actions appropriate to address the needs of the infant or toddler with a disability who is the subject of the complaint and the infant's or toddler's family (such as compensatory services or monetary reimbursement); and

b. Appropriate future provision of services for all infants and toddlers with disabilities and their families.

281—120.433(34CFR303) Minimum state complaint procedures.

120.433(1) Time limit; minimum procedures. The department must include in its complaint procedures a time limit of 60 days after a complaint is filed under rule 281—120.434(34CFR303) to:

a. Carry out an independent, on-site investigation, if the department determines that an investigation is necessary;

b. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

c. Provide the agency or EIS provider named in the complaint an opportunity to respond to the complaint, including, at a minimum:

(1) At the discretion of the department, a proposal to resolve the complaint; and

(2) An opportunity for a parent who has filed a complaint and the lead agency, public agency, or EIS provider to voluntarily engage in mediation, consistent with subrule 120.430(2) and rule 281—120.431(34CFR303);

d. Review all relevant information and make an independent determination as to whether the agency or EIS provider named in the complaint is violating a requirement of Part C of the Act or of this chapter; and

e. Issue a written decision to the complainant that addresses each allegation in the complaint and contains:

(1) Findings of fact and conclusions; and

(2) The reasons for the department's final decision.

120.433(2) Time extension; final decision; implementation. The department's procedures described in subrule 120.433(1) must:

a. Permit an extension of the time limit under subrule 120.433(1) only if:

(1) Exceptional circumstances exist with respect to a particular complaint; or

(2) The parent (or individual or organization, if mediation is available to the individual or organization under state procedures) and agency or EIS provider named in the complaint agree to extend the time to engage in mediation pursuant to subparagraph 120.433(1)“c”(2); and

b. Include procedures for effective implementation of the department's final decision, if needed, including:

(1) Technical assistance activities;

(2) Negotiations; and

(3) Corrective actions to achieve compliance.

120.433(3) Complaints filed under this rule and due process hearings under subrule 120.430(4). If a written complaint is received that is also the subject of a due process hearing under subrule 120.430(4), or contains multiple issues of which one or more are part of that hearing, the department must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process hearing must be resolved using the time limit and procedures described in subrules 120.433(1) and 120.433(2). If an issue raised in a complaint filed under this rule has previously been decided in a due process hearing involving the same parties, the due process hearing decision is binding on that issue, and the department must inform

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the complainant to that effect. A complaint alleging the department's, other public agency's, or EIS provider's failure to implement a due process hearing decision must be resolved by the department.

281—120.434(34CFR303) Filing a complaint.

120.434(1) *Complainant.* An organization or individual may file a signed written complaint under the procedures described in rules 281—120.432(34CFR303) and 281—120.433(34CFR303).

120.434(2) *Contents of complaint.* The complaint must include:

a. A statement that an agency or EIS provider has violated a requirement of Part C of the Act or of this chapter;

b. The facts on which the statement is based;

c. The signature and contact information for the complainant; and

d. If alleging violations with respect to a specific child:

(1) The name and address of the residence of the child;

(2) The name of the EIS provider serving the child;

(3) A description of the nature of the problem of the child, including facts relating to the problem; and

(4) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

120.434(3) *Time limit.* The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with rule 281—120.432(34CFR303).

120.434(4) *Providing copies to parties named in the complaint.* The party filing the complaint must forward a copy of the complaint to the public agency or EIS provider serving the child at the same time the party files the complaint with the department.

120.434(5) *Failure to comply with mediation agreement or due process decision.* A complainant may allege a party has failed to comply with a due process hearing decision, a mediation agreement, or a resolution meeting agreement. If the complaint is substantiated, the department will grant appropriate relief.

281—120.435(34CFR303) Appointment of an administrative law judge.

120.435(1) *Qualifications and duties.* Whenever a due process complaint is received under subrule 120.430(4), the department will appoint an impartial administrative law judge (ALJ) to implement the complaint resolution process in this chapter. The person must:

a. Have knowledge about the provisions of Part C of the Act and of this chapter and the needs of, and early intervention services available for, infants and toddlers with disabilities and their families; and

b. Perform the following duties:

(1) Listen to the presentation of relevant viewpoints about the due process complaint;

(2) Examine all information relevant to the issues;

(3) Seek to reach a timely resolution of the due process complaint; and

(4) Provide a record of the proceedings, including a written decision.

120.435(2) *Definition of "impartial."*

a. "Impartial" means that the administrative law judge appointed to implement the due process hearing under this chapter:

(1) Is not an employee of the department or other agency or EIS provider involved in the provision of early intervention services or care of the child; and

(2) Does not have a personal or professional interest that would conflict with the ALJ's objectivity in implementing the process.

b. A person who otherwise qualifies under this subrule is not an employee of an agency solely because the person is paid by the agency to implement the due process hearing procedures or mediation procedures under this chapter.

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281—120.436(34CFR303) Parental rights in due process hearing proceedings.

120.436(1) General. The department must ensure that the parents of a child referred to or receiving Part C services are afforded the rights in subrule 120.436(2) in the due process hearing carried out under subrule 120.430(4).

120.436(2) Rights of parents. Any parent involved in a due process hearing has the right to:

- a. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for infants and toddlers with disabilities;
- b. Present evidence and confront, cross-examine, and compel the attendance of witnesses;
- c. Prohibit the introduction of any evidence at the hearing that has not been disclosed to the parent at least five days before the hearing;
- d. Obtain a written or electronic verbatim transcription of the hearing at no cost to the parent; and
- e. Receive a written copy of the findings of fact and decisions at no cost to the parent.

120.436(3) Other party rights. Any public agency or EIS provider that is a party to a due process hearing under subrule 120.430(4) has each of the rights listed in subrule 120.436(2).

281—120.437(34CFR303) Convenience of hearings and timelines.

120.437(1) Time and place. Any due process hearing conducted under this chapter must be carried out at a time and place that is reasonably convenient to the parents.

120.437(2) Timeline for ALJ decision. The department must ensure that, not later than 30 days after the receipt of a parent's due process complaint, the due process hearing required under this chapter is completed and a written decision mailed to each of the parties.

120.437(3) Extension of ALJ timeline. An ALJ may grant specific extensions of time beyond the period set out in subrule 120.437(2) at the request of either party.

281—120.438(34CFR303) Civil action. Any party aggrieved by the findings and decision issued pursuant to a due process complaint has the right to bring a civil action in state or federal court under Section 639(a)(1) of the Act.

281—120.439(34CFR303) Limitation of actions.

120.439(1) Limitation: due process complaints. A parent, agency, or EIS provider must request an impartial hearing on the due process complaint within two years of the date the parent, agency, or provider knew or should have known about the alleged action that forms the basis of the due process complaint.

120.439(2) Exceptions to timeline. The timeline described in subrule 120.439(1) does not apply to a parent if the parent was prevented from filing a due process complaint due to either of the following:

- a. Specific misrepresentations by an agency or EIS provider that it had resolved the problem forming the basis of the due process complaint; or
- b. The agency's or EIS provider's withholding of information from the parent that was required under this chapter to be provided to the parent.

120.439(3) Limitation: civil action. The party bringing the civil action under rule 281—120.438(34CFR303) shall have 90 days from the date of the decision of the administrative law judge to file a civil action.

281—120.440(34CFR303) Rule of construction. Nothing in this chapter restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973, or other federal laws protecting the rights of children with disabilities, except that, before the filing of a civil action under these laws seeking relief that is also available under Section 639 of the Act, the procedures under this chapter must be exhausted to the same extent as would be required had the action been brought under Section 639 of the Act.

281—120.441(34CFR303) Attorney fees. Reasonable attorney fees are available to a prevailing party (parent or, in certain circumstances, public agency or EIS provider) in a due process hearing or a mediation conference to the extent those fees are available under the Act. No fees are available under the state complaint procedure in subrule 120.430(3).

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281—120.442 to 120.448 Reserved.

281—120.449(34CFR303) State enforcement mechanisms. Notwithstanding subrule 120.431(2), which provides for judicial enforcement of a written agreement reached as a result of a mediation, there is nothing in this chapter that would prevent the state from using other mechanisms to seek enforcement of that agreement, provided that use of those mechanisms is not mandatory and does not delay or deny a party the right to seek enforcement of the written agreement in a state court of competent jurisdiction or in a district court of the United States.

281—120.450 to 120.499 Reserved.

DIVISION VII
USE OF FUNDS; PAYOR OF LAST RESORT

281—120.500(34CFR303) Use of funds, payor of last resort, and system of payments.

120.500(1) *Statewide system.* The statewide system must include written policies and procedures that meet the requirements of the:

- a.* Use of funds provisions in rule 281—120.501(34CFR303); and
- b.* Payor of last resort provisions in rules 281—120.510(34CFR303) through 281—120.521(34CFR303) (regarding the identification and coordination of funding resources for, and the provision of, early intervention services under Part C of the Act within the state).

120.500(2) *System of payments.* The state may establish, consistent with subrules 120.13(1) and 120.203(2), a system of payments for early intervention services under Part C of the Act, including a schedule of sliding fees or cost participation fees (such as copayments, premiums, or deductibles) required to be paid under federal, state, local, or private programs of insurance or benefits for which the infant or toddler with a disability or the child's family is enrolled, that meets the requirements of rules 281—120.520(34CFR303) and 281—120.521(34CFR303).

281—120.501(34CFR303) Permissive use of funds by the department. Consistent with rules 281—120.120(34CFR303) through 281—120.122(34CFR303) and 281—120.220(34CFR303) through 281—120.226(34CFR303), the department may use funds under this chapter for activities or expenses that are reasonable and necessary for implementing Early ACCESS, including funds:

120.501(1) For direct early intervention services for infants and toddlers with disabilities and their families under this chapter that are not otherwise funded through other public or private sources (subject to rules 281—120.510(34CFR303) through 281—120.521(34CFR303));

120.501(2) To expand and improve services for infants and toddlers with disabilities and their families under this chapter that are otherwise available; and

120.501(3) In any state that does not provide services under 34 CFR 303.204 for at-risk infants and toddlers, as defined in rule 281—120.5(34CFR303), to strengthen the statewide system by initiating, expanding, or improving collaborative efforts related to at-risk infants and toddlers, including establishing linkages with appropriate public and private community-based organizations, services, and personnel for the purposes of:

- a.* Identifying and evaluating at-risk infants and toddlers;
- b.* Making referrals for the infants and toddlers identified and evaluated under paragraph 120.501(3) "a"; and
- c.* Conducting periodic follow-up on each referral, to determine if the status of the infant or toddler involved has changed with respect to the eligibility of the infant or toddler for services under this chapter.

281—120.502 to 120.509 Reserved.

281—120.510(34CFR303) Payor of last resort.

120.510(1) *Nonsubstitution of funds.* Except as provided in subrule 120.510(2), funds under this chapter may not be used to satisfy a financial commitment for services that would otherwise have been

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paid for from another public or private source, including any medical program administered by the Department of Defense, but for the enactment of Part C of the Act. Therefore, funds under this chapter may be used only for early intervention services that an infant or toddler with a disability needs but is not currently entitled to receive or have payment made from any other federal, state, local, or private source (subject to rules 281—120.520(34CFR303) and 281—120.521(34CFR303)).

120.510(2) *Interim payments—reimbursement.* If necessary to prevent a delay in the timely provision of appropriate early intervention services to a child or the child's family, funds under Part C of the Act may be used to pay the provider of services (for services and functions authorized under this chapter, including health services, as defined in rule 281—120.16(34CFR303) (but not medical services); functions of the child find system described in rules 281—120.115(34CFR303) through 281—120.117(34CFR303) and rules 281—120.301(34CFR303) through 281—120.320(34CFR303); and evaluations and assessments in rule 281—120.321(34CFR303)), pending reimbursement from the agency or entity that has ultimate responsibility for the payment.

120.510(3) *Nonreduction of benefits.* Nothing in this chapter may be construed to permit a state to reduce medical or other assistance available in the state or to alter eligibility under Title V of the Social Security Act, 42 U.S.C. 701 et seq. (SSA) (relating to maternal and child health) or Title XIX of the SSA, 42 U.S.C. 1396 (relating to Medicaid), including Section 1903(a) of the SSA regarding medical assistance for services furnished to an infant or toddler with a disability when those services are included in the child's IFSP adopted pursuant to Part C of the Act.

281—120.511(34CFR303) Methods to ensure the provision of, and financial responsibility for, Early ACCESS services.

120.511(1) *General.* The state must ensure that it has in place methods for interagency coordination. Under these methods, the governor must ensure that the interagency agreement or other method for interagency coordination is in effect between the department and each signatory agency in order to ensure:

- a. The provision of, and establishing financial responsibility for, early intervention services provided under this chapter; and
- b. Such services are consistent with the requirement in Section 635 of the Act and the state's application under Section 637 of the Act, including the provision of such services during the pendency of any dispute between state agencies.

120.511(2) *Methods.* The methods in subrule 120.511(1) must meet all requirements in this rule and be set forth in one of the following:

- a. State law or rule;
- b. Signed interagency and intra-agency agreements between respective agency officials that clearly identify the financial and service provision responsibilities of each agency (or entity within the agency); or
- c. Other appropriate written methods determined by the governor, or the governor's designee, and approved by the Secretary through the review and approval of the state's application.

120.511(3) *Procedures for resolving disputes.*

a. Each method must include procedures for achieving a timely resolution of intra-agency and interagency disputes about payments for a given service or disputes about other matters related to Early ACCESS. Those procedures must include a mechanism for resolution of disputes within agencies and for the governor, governor's designee, or the department to make a final determination for interagency disputes, which determination must be binding upon the agencies involved.

b. The method must:

- (1) Permit the agency to resolve its own internal disputes (based on the agency's procedures that are included in the agreement), so long as the agency acts in a timely manner; and
- (2) Include the process that the department will follow in achieving resolution of intra-agency disputes, if a given agency is unable to resolve its own internal disputes in a timely manner.

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c. If, during the department's resolution of the dispute, the governor, governor's designee, or department determines that the assignment of financial responsibility under this rule was inappropriately made:

(1) The governor, governor's designee, or department must reassign the financial responsibility to the appropriate agency; and

(2) The department must make arrangements for reimbursement of any expenditures incurred by the agency originally assigned financial responsibility.

120.511(4) *Delivery of services in a timely manner.* The methods adopted by the state under this rule must:

a. Include a mechanism to ensure that no services that a child is entitled to receive under this chapter are delayed or denied because of disputes between agencies regarding financial or other responsibilities; and

b. Be consistent with the written funding policies adopted by the state under this division and include any provisions the state has adopted under rule 281—120.520(34CFR303) regarding the use of insurance to pay for Part C services.

120.511(5) *Additional components.* Each method must include any additional components necessary to ensure effective cooperation and coordination among, and the department's general supervision (including monitoring) of, EIS providers (including all public agencies) involved in Early ACCESS.

281—120.512 to 120.519 Reserved.

281—120.520(34CFR303) Policies related to use of public benefits or insurance or private insurance to pay for Early ACCESS services.

120.520(1) *Use of public benefits or public insurance to pay for Early ACCESS services.*

a. The state may not use the public benefits or insurance of a child or parent to pay for Part C services unless the state provides written notification, consistent with paragraph 120.521(1) "c," to the child's parents, and the state meets the no-cost protections identified in paragraph 120.520(1) "b."

b. With regard to the state's using the public benefits or insurance of a child or parent to pay for Part C services, the state:

(1) May not require a parent to sign up for or enroll in public benefits or insurance programs as a condition of receiving Part C services and must obtain consent prior to using the public benefits or insurance of a child or parent if that child or parent is not already enrolled in such a program;

(2) Must obtain consent, consistent with rule 281—120.7(34CFR303) and subrule 120.420(1), to use a child's or parent's public benefits or insurance to pay for Part C services if that use would:

1. Decrease available lifetime coverage or any other insured benefit for that child or parent under that program;

2. Result in the child's parents paying for services that would otherwise be covered by the public benefits or insurance program;

3. Result in any increase in premiums or discontinuation of public benefits or insurance for that child or that child's parents; or

4. Risk loss of eligibility for the child or that child's parents for home and community-based waivers based on aggregate health-related expenditures.

(3) If the parent does not provide consent under paragraph 120.520(1) "b," the state must still make available those Part C services on the IFSP to which the parent has provided consent.

c. Prior to the state's using a child's or parent's public benefits or insurance to pay for Part C services, the state must provide written notification to the child's parents. The notification must include:

(1) A statement that parental consent must be obtained under rule 281—120.414(34CFR303), if that rule applies, before the department or EIS provider discloses, for billing purposes, a child's personally identifiable information to the department of human services, the state public agency responsible for the administration of the state's public benefits or insurance program (e.g., Medicaid);

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(2) A statement of the no-cost protection provisions in subrule 120.520(1) and that if the parent does not provide the consent under that subrule, the agency must still make available those Part C services on the IFSP for which the parent has provided consent;

(3) A statement that the parents have the right under rule 281—120.414(34CFR303), if that rule applies, to withdraw their consent to disclosure of personally identifiable information to the department of human services, the state public agency responsible for the administration of the state's public benefits or insurance program (e.g., Medicaid) at any time; and

(4) A statement of the general categories of costs that the parent would incur as a result of participating in a public benefits or insurance program (such as copayments or deductibles, or the required use of private insurance as the primary insurance).

d. If a state requires a parent to pay any costs that the parent would incur as a result of the state's using a child's or parent's public benefits or insurance to pay for Part C services (such as copayments or deductibles, or the required use of private insurance as the primary insurance), those costs must be identified in the state's system of payments policies under rule 281—120.521(34CFR303) and included in the notification provided to the parent under paragraph 120.520(1) "c"; otherwise, the state cannot charge those costs to the parent.

120.520(2) Use of private insurance to pay for Part C services.

a. The state may not use the private insurance of a parent of an infant or toddler with a disability to pay for Part C services unless the parent provides parental consent, consistent with rule 281—120.7(34CFR303) and subrule 120.420(1), to use private insurance to pay for Part C services for the parent's child or the state meets one of the exceptions in paragraph 120.520(2) "d." This includes the use of private insurance when such use is a prerequisite for the use of public benefits or insurance. Parental consent must be obtained:

(1) When an agency or EIS provider seeks to use the parent's private insurance or benefits to pay for the initial provision of an early intervention service in the IFSP; and

(2) Each time consent for services is required under subrule 120.420(1) due to an increase (in frequency, length, duration, or intensity) in the provision of services in the child's IFSP.

b. If a state requires a parent to pay any costs that the parent would incur as a result of the state's use of private insurance to pay for early intervention services (such as copayments, premiums, or deductibles), those costs must be identified in the state's system of payments policies under rule 281—120.521(34CFR303); otherwise, the state may not charge those costs to the parent.

c. When obtaining parental consent required under paragraph 120.520(2) "a" or initially using benefits under a child's or parent's private insurance policy to pay for an early intervention service under paragraph 120.520(2) "d," the state must provide to the parent a copy of the state's system of payments policies that identifies the potential costs that the parent may incur when the parent's private insurance is used to pay for early intervention services under this chapter (such as copayments, premiums, or deductibles or other long-term costs such as the loss of benefits because of annual or lifetime health insurance coverage caps under the insurance policy).

d. The parental consent requirements in paragraphs 120.520(2) "a" through "c" do not apply if the state has enacted a state statute regarding private health insurance coverage for early intervention services under Part C of the Act that expressly provides that:

(1) The use of private health insurance to pay for Part C services cannot count towards or result in a loss of benefits due to the annual or lifetime health insurance coverage caps for the infant or toddler with a disability, the parent, or the child's family members who are covered under that health insurance policy;

(2) The use of private health insurance to pay for Part C services cannot negatively affect the availability of health insurance to the infant or toddler with a disability, the parent, or the child's family members who are covered under that health insurance policy, and health insurance coverage may not be discontinued for these individuals due to the use of the health insurance to pay for services under Part C of the Act; and

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(3) The use of private health insurance to pay for Part C services cannot be the basis for increasing the health insurance premiums of the infant or toddler with a disability, the parent, or the child's family members covered under that health insurance policy.

e. If the state has enacted a state statute that meets the requirements in paragraph 120.520(2) "d," regarding the use of private health insurance coverage to pay for early intervention services under Part C of the Act, the state may reestablish a new baseline of state and local expenditures under subrule 120.225(2) in the next federal fiscal year following the effective date of the statute.

120.520(3) *Inability to pay.* If a parent or family of an infant or toddler with a disability is determined unable to pay under the state's definition of inability to pay under subrule 120.521(1) and does not provide consent under paragraphs 120.520(2) "a" and "b," the lack of consent may not be used to delay or deny any services under this chapter to that child or family.

120.520(4) *Proceeds or funds from public insurance or benefits or from private insurance.*

a. Proceeds or funds from public insurance or benefits or from private insurance are not treated as program income for purposes of 34 CFR 80.25.

b. If the state receives reimbursements from federal funds (e.g., Medicaid reimbursements attributable directly to federal funds) for services under Part C of the Act, those funds are considered neither state nor local funds under subrule 120.225(2).

c. If the state spends funds from private insurance for services under this chapter, those funds are considered neither state nor local funds under rule 281—120.225(34CFR303).

120.520(5) *Funds received from a parent or family member under the state's system of payments.* Funds received by the state from a parent or family member under the state's system of payments established under rule 281—120.521(34CFR303) are considered program income under 34 CFR 80.25. These funds:

a. Are not deducted from the total allowable costs charged under Part C of the Act (as set forth in 34 CFR 80.25(g)(1));

b. Must be used for the state's Part C early intervention services program, consistent with 34 CFR 80.25(g)(2); and

c. Are considered neither state nor local funds under subrule 120.225(2).

281—120.521(34CFR303) System of payments and fees.

120.521(1) *General.* If a state elects to adopt a system of payments in subrule 120.500(2), the state's system of payments policies must be in writing and specify which functions or services, if any, are subject to the system of payments (including any fees charged to the family as a result of using one or more of the family's public insurance or benefits or private insurance), and include:

a. The payment system and schedule of sliding or cost participation fees that may be charged to the parent for early intervention services under this chapter;

b. The basis and amount of payments or fees;

c. The state's definition of ability to pay (including its definition of income and family expenses, such as extraordinary medical expenses), its definition of inability to pay, and when and how the state makes its determination of the ability or inability to pay;

d. An assurance that:

(1) Fees will not be charged to parents for the services that a child is otherwise entitled to receive at no cost (including those services identified under this subrule and subrules 120.521(2) and 120.521(3));

(2) The inability of the parents of an infant or toddler with a disability to pay for services will not result in a delay or denial of services under this chapter to the child or the child's family such that, if the parent or family meets the state's definition of inability to pay, the infant or toddler with a disability must be provided all Part C services at no cost;

(3) Families will not be charged any more than the actual cost of the Part C service (factoring in any amount received from other sources for payment for that service); and

(4) Families with public insurance or benefits or private insurance will not be charged disproportionately more than families who do not have public insurance or benefits or private insurance;

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- e.* Provisions stating that the failure to provide the requisite income information and documentation may result in a charge of a fee on the fee schedule and specify the fee to be charged; and
- f.* Provisions that permit, but do not require, the department or other relevant agency to use Part C or other funds to pay for costs such as the premiums, deductibles, or copayments.

120.521(2) Functions not subject to fees. The following are required functions that must be carried out at public expense, and for which no fees may be charged to parents:

a. Implementing the child find requirements in rules 281—120.301(34CFR303) through 281—120.303(34CFR303).

b. Evaluation and assessment, in accordance with rule 281—120.320(34CFR303), and the functions related to evaluation and assessment in subrule 120.13(2).

c. Service coordination services, as defined in subrule 120.13(2) and rule 281—120.33(34CFR303).

d. Administrative and coordinative activities related to:

(1) The development, review, and evaluation of IFSPs and interim IFSPs in accordance with rules 281—120.342(34CFR303) through 281—120.345(34CFR303); and

(2) Implementation of the procedural safeguards in Division VI of this chapter and the other components of the statewide system of early intervention services in Division V of this chapter and this division.

120.521(3) FAPE mandates or use of funds under Part B of the Act to serve children under age three. If the state has in effect a state law requiring the provision of FAPE for, or uses Part B funds to serve, an infant or toddler with a disability under the age of three (or any subset of infants and toddlers with disabilities under the age of three), the state may not charge the parents of the infant or toddler with a disability for any services (e.g., physical or occupational therapy) under this chapter that are part of FAPE for that infant or toddler and the child's family, and those FAPE services must meet the requirements of both Parts B and C of the Act.

120.521(4) Family fees.

a. Fees or costs collected from a parent or the child's family to pay for early intervention services under the state's system of payments are program income under 34 CFR 80.25. The state may add this program income to its Part C grant funds, rather than deducting the program income from the amount of the state's Part C grant. Any fees collected must be used for the purposes of the grant under Part C of the Act.

b. Fees collected under a system of payments are considered neither state nor local funds under subrule 120.225(2).

120.521(5) Procedural safeguards.

a. The state's system of payments must include written policies to inform parents that a parent who wishes to contest the imposition of a fee, or the state's determination of the parent's ability to pay, may do one of the following:

(1) Participate in mediation in accordance with rule 281—120.431(34CFR303).

(2) Request a due process hearing under rule 281—120.436(34CFR303).

(3) File a state complaint under rule 281—120.434(34CFR303).

(4) Use any other procedure established by the state for speedy resolution of financial claims, provided that such use does not delay or deny the parent's procedural rights under this chapter, including the right to pursue, in a timely manner, the redress options described in this subrule.

b. The state must inform parents of these procedural safeguard options by either:

(1) Providing parents with a copy of the state's system of payments policies when obtaining consent for provision of early intervention services under subrule 120.420(1); or

(2) Including this information with the notice provided to parents under rule 281—120.421(34CFR303).

281—120.522 to 120.599 Reserved.

DIVISION VIII
STATE INTERAGENCY COORDINATING COUNCIL**281—120.600(34CFR303) Establishment of council.**

120.600(1) General. The state establishes a state interagency coordinating council, as defined in rule 281—120.8(34CFR303).

120.600(2) Appointment. The council must be appointed by the governor. The governor must ensure that the membership of the council reasonably represents the population of the state.

120.600(3) Chairperson. The governor must designate a member of the council to serve as the chairperson of the council or delegate that responsibility to the members of the council. Any member of the council who is a representative of the lead agency designated under rule 281—120.201(34CFR303) may not serve as the chairperson of the council.

120.600(4) Name of council. The council established by this division shall be known as the Iowa council for Early ACCESS (council).

281—120.601(34CFR303) Composition.

120.601(1) General. The council must be composed as follows:

a. At least 20 percent of the members must be parents, including minority parents, of infants or toddlers with disabilities or children with disabilities aged 12 years or younger, with knowledge of, or experience with, programs for infants and toddlers with disabilities. At least one parent member must be a parent of an infant or toddler with a disability or a child with a disability aged 6 years or younger.

b. At least 20 percent of the members must be public or private providers of early intervention services.

c. At least one member must be from the state legislature.

d. At least one member must be involved in personnel preparation.

e. At least one member must:

(1) Be from each of the state agencies involved in the provision of, or payment for, early intervention services to infants and toddlers with disabilities and their families; and

(2) Have sufficient authority to engage in policy planning and implementation on behalf of these agencies.

f. At least one member must:

(1) Be from the unit of the department responsible for preschool services to children with disabilities; and

(2) Have sufficient authority to engage in policy planning and implementation on behalf of the department.

g. At least one member must be from the agency responsible for the state Medicaid and CHIP program.

h. At least one member must be from a Head Start or Early Head Start agency or program in the state.

i. At least one member must be from a state agency responsible for child care.

j. At least one member must be from the agency responsible for the state regulation of private health insurance.

k. At least one member must be a representative designated by the Office of the Coordination of Education of Homeless Children and Youth.

l. At least one member must be a representative from the state child welfare agency responsible for foster care.

m. At least one member must be from the state agency responsible for children's mental health.

120.601(2) Members serving more than one role. The governor may appoint one member to represent more than one program or agency listed in paragraphs 120.601(1)“g” through “m.”

120.601(3) Additional members permitted. The council may include other members selected by the governor, including a representative from the Bureau of Indian Education (BIE) or, where there is no

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school operated or funded by the BIE in the state, from the Indian Health Service or the tribe or tribal council.

120.601(4) *Limitation on voting: conflict of interest.* No member of the council may cast a vote on any matter that would provide direct financial benefit to that member or otherwise give the appearance of a conflict of interest under state law.

120.601(5) *Executive committee; other committees.* The executive committee shall consist of the council chairperson; the vice-chairperson; at least two council members, one of whom is a parent; and a council representative from each of the signatory agencies. The department's Early ACCESS program coordinator shall be an ex officio member of the executive committee. The executive committee is responsible for initially reviewing and discussing information and issues that will be addressed by the full council; establishing the framework for overall council business, including the calendar of meetings and the agenda for council meetings; and facilitating the implementation of the interagency agreement among the signatory agencies. The council may establish or dissolve other standing or ad hoc committees from time to time and in the furtherance of its work.

281—120.602(34CFR303) Meetings.

120.602(1) *Minimum number of meetings.* The council must meet, at a minimum, on a quarterly basis, and in such places as it determines necessary.

120.602(2) *Requirements for meetings.* The meetings must:

- a. Be publicly announced sufficiently in advance of the dates they are to be held to ensure that all interested parties have an opportunity to attend;
- b. To the extent appropriate, be open and accessible to the general public; and
- c. As needed, provide for interpreters for persons who are deaf and other necessary services for council members and participants. The council may use funds under this chapter to pay for those services.

281—120.603(34CFR303) Use of funds by the council.

120.603(1) *General.* Subject to the approval by the governor, the council may use funds under this chapter to:

- a. Conduct hearings and forums;
- b. Reimburse members of the council for reasonable and necessary expenses for attending council meetings and performing council duties (including child care for parent representatives);
- c. Pay compensation to a member of the council if the member is not employed or must forfeit wages from other employment when performing official council business;
- d. Hire staff; and
- e. Obtain the services of professional, technical, and clerical personnel as may be necessary to carry out the performance of its functions under Part C of the Act.

120.603(2) *No compensation for members.* Except as provided in subrule 120.603(1), council members must serve without compensation from funds available under Part C of the Act.

281—120.604(34CFR303) Functions of the council; required duties.

120.604(1) *Advising and assisting the department.* The council must advise and assist the department in the performance of the department's responsibilities in Section 635(a)(10) of the Act, including:

- a. Identification of sources of fiscal and other support for services for early intervention service programs under Part C of the Act;
- b. Assignment of financial responsibility to the appropriate agency;
- c. Promotion of methods (including use of intra-agency and interagency agreements) for intra-agency and interagency collaboration regarding child find under rules 281—120.115(34CFR303) and 281—120.302(34CFR303), monitoring and enforcement under rules 281—120.120(34CFR303) and 281—120.700(34CFR303) through 281—120.708(34CFR303), financial responsibility and provision of early intervention services under rules 281—120.202(34CFR303) and 281—120.511(34CFR303), and transition under rule 281—120.209(34CFR303); and

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d. Preparation of applications under this chapter and amendments to those applications.

120.604(2) *Advising and assisting on transition.* The council must advise and assist the department regarding the transition of toddlers with disabilities to preschool and other appropriate services.

120.604(3) *Annual report to the governor and to the Secretary.*

a. The council must:

(1) Prepare and submit an annual report to the governor and to the Secretary on the status of early intervention service programs for infants and toddlers with disabilities and their families under Part C of the Act operated within the state; and

(2) Submit the report to the Secretary by a date that the Secretary establishes.

b. Each annual report must contain the information required by the Secretary for the year for which the report is made.

281—120.605(34CFR303) **Authorized activities by the council.** The council may carry out the following activities:

120.605(1) Advise and assist the department regarding the provision of appropriate services for children with disabilities from birth through age five.

120.605(2) Advise appropriate agencies in the state with respect to the integration of services for infants and toddlers with disabilities and at-risk infants and toddlers and their families, regardless of whether at-risk infants and toddlers are eligible for early intervention services in the state.

120.605(3) Coordinate and collaborate with the state advisory council on early childhood education and care for children, as described in Section 642B(b)(1)(A)(i) of the Head Start Act, 42 U.S.C. 9837b(b)(1)(A)(i), if applicable, and other state interagency early learning initiatives, as appropriate.

281—120.606 to 120.699 Reserved.

DIVISION IX
FEDERAL AND STATE MONITORING AND ENFORCEMENT;
REPORTING; AND ALLOCATION OF FUNDS

281—120.700(34CFR303) **State monitoring and enforcement.**

120.700(1) *General.* The department must:

a. Monitor the implementation of this chapter;

b. Make determinations annually about the performance of each EIS program, using the categories identified in subrule 120.703(2);

c. Enforce this chapter consistent with rule 281—120.704(34CFR303), using appropriate enforcement mechanisms listed therein; and

d. Report annually on the performance of the state and of each EIS program under this chapter as provided in rule 281—120.702(34CFR303).

120.700(2) *Primary focus of monitoring activity.* The primary focus of the state's monitoring activities must be on:

a. Improving early intervention results and functional outcomes for all infants and toddlers with disabilities; and

b. Ensuring that EIS programs meet the program requirements under Part C of the Act, with a particular emphasis on those requirements that are most closely related to improving early intervention results for infants and toddlers with disabilities.

120.700(3) *Indicators of performance and compliance.* As a part of its responsibilities under subrule 120.700(1), the state must use quantifiable indicators and such qualitative indicators as are needed to adequately measure performance in the priority areas identified in subrule 120.700(4), and the indicators established by the Secretary for the state performance plans.

120.700(4) *Monitoring; priority areas.* The department must monitor each EIS program located in the state, using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in those areas:

a. Early intervention services in natural environments.

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b. State exercise of general supervision, including child find, effective monitoring, mediation, and a system of transition services as defined in Section 637(a)(9) of the Act.

120.700(5) Correction of noncompliance. In exercising its monitoring responsibilities under subrule 120.700(4), the state must ensure that when it identifies noncompliance with the requirements of this chapter by EIS programs and providers, the noncompliance is corrected as soon as possible and in no case later than one year after the state's identification of the noncompliance.

281—120.701(34CFR303) State performance plans and data collection.

120.701(1) General. The state must have in place a performance plan that meets the requirements described in Section 616 of the Act; is approved by the Secretary; and includes an evaluation of the state's efforts to implement the requirements and purposes of Part C of the Act, a description of how the state will improve implementation, and measurable and rigorous targets for the indicators established by the Secretary under the priority areas described in 34 CFR 303.700(d).

120.701(2) Review of state performance plan. The state must review its state performance plan at least once every six years and submit any amendments to the Secretary.

120.701(3) Data collection.

a. The state must collect valid and reliable information as needed to report annually to the Secretary on the indicators established by the Secretary for the state performance plans.

b. If the Secretary permits states to collect data on specific indicators through state monitoring or sampling, and the state collects data for a particular indicator through state monitoring or sampling, the state must collect and report data on those indicators for each EIS program at least once during the six-year period of a state performance plan.

c. Nothing in Part C of the Act or this chapter may be construed to authorize the development of a nationwide database of personally identifiable information on individuals involved in studies or other collections of data under Part C of the Act.

281—120.702(34CFR303) State use of targets and reporting.

120.702(1) General. The state must use the targets established in the state's performance plan under rule 281—120.701(34CFR303) and the priority areas described in subrule 120.700(4) to analyze the performance of each EIS program in implementing Part C of the Act.

120.702(2) Public reporting and privacy.

a. Public report. The state must:

(1) Report annually to the public on the performance of each EIS program located in the state on the targets in the state's performance plan as soon as practicable but no later than 120 days following the state's submission of its annual performance report to the Secretary under paragraph 120.702(2) "b"; and

(2) Make the state's performance plan under subrule 120.701(1), annual performance reports under this subrule, and the state's annual reports on the performance of each EIS program under this subrule available through public means, including by posting on the department's Web site, distribution to the media, and distribution to EIS programs.

(3) If the state, in meeting the requirements of this subrule, collects data through state monitoring or sampling, the state must include in its public report on EIS programs under this subrule the most recently available performance data on each EIS program and the date the data were collected.

b. State performance report. The state must report annually to the Secretary on the performance of the state under the state's performance plan.

c. Privacy. The state must not report to the public or the Secretary any information on performance that would result in the disclosure of personally identifiable information about individual children, or where the available data are insufficient to yield statistically reliable information.

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281—120.703(34CFR303) Department review and determination regarding EIS program performance.

120.703(1) Review. The department shall annually review the performance of each EIS provider, including but not limited to data on indicators identified in the state's performance plan, information obtained through monitoring visits, and any other public information made available.

120.703(2) Determination. Based on the information provided in subrule 120.703(1) to the department, the department shall determine if each EIS provider:

- a. Meets the requirements and purposes of Part C of the Act;
- b. Needs assistance in implementing the requirements of Part C of the Act;
- c. Needs intervention in implementing the requirements of Part C of the Act; or
- d. Needs substantial intervention in implementing the requirements of Part C of the Act.

120.703(3) Notice and opportunity for a hearing. For determinations made under paragraphs 120.703(2) "c" and "d," the department shall provide reasonable notice of its determination and may, in its sound discretion, grant an informal hearing to the EIS provider; however, if withholding of funds is a remedy associated with any particular determination, the department shall provide a hearing under rule 281—120.705(34CFR303). Under any hearing granted under this subrule or rule 281—120.705(34CFR303), the EIS provider must demonstrate that the department abused its discretion in making the determination described in subrule 120.703(2).

120.703(4) Criteria for determinations. The department shall develop criteria for making the determinations required by subrule 120.703(2).

120.703(5) Adjustment or variance of determination. In making the determination required by subrule 120.703(2), the department in its discretion may adjust or vary from the criteria described in subrule 120.703(4) based on unusual, unanticipated, or extraordinary aggravating or mitigating measures, on a case-by-case basis.

281—120.704(34CFR303) Enforcement.

120.704(1) Needs assistance. If the department determines, for two consecutive years, that an EIS provider needs assistance under paragraph 120.703(2) "b" in implementing the requirements of Part C of the Act, the department shall take one or more of the following actions:

a. Advise the EIS provider of available sources of technical assistance that may help the EIS provider address the areas in which the provider needs assistance, which may include assistance from the Office of Special Education Programs, other offices of the U.S. Department of Education, other federal agencies, technical assistance providers approved by the Secretary or the department, and other federally funded nonprofit agencies, and requires the EIS provider to work with appropriate entities. This technical assistance may include:

(1) The provision of advice by experts to address the areas in which the EIS provider needs assistance, including explicit plans for addressing the areas of concern within a specified period of time;

(2) Assistance in identifying and implementing professional development, early intervention service provision strategies, and methods of early intervention service provision that are based on scientifically based research;

(3) Designating and using administrators, service coordinators, service providers, and other personnel from the EIS program to provide advice, technical assistance, and support; and

(4) Devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service agencies, national centers of technical assistance supported under Part D of the Act, and private providers of scientifically based technical assistance.

b. Identify the EIS provider as a high-risk grantee and impose special conditions on the provider's grant under this chapter.

120.704(2) Needs intervention. If the department determines, for three or more consecutive years, that an EIS provider needs intervention under paragraph 120.703(2) "c" in implementing the requirements of Part C of the Act, the following apply:

- a. The department may take any of the actions described in subrule 120.704(1).
- b. The department shall take one or both of the following actions:

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(1) Require the EIS provider to prepare a corrective action plan or improvement plan if the department determines that the EIS provider should be able to correct the problem within one year.

(2) Withhold, in whole or in part, any further payments to the EIS provider under Part C of the Act.

120.704(3) Needs substantial intervention. Notwithstanding subrules 120.704(1) and 120.704(2), at any time that the department determines that an EIS provider needs substantial intervention in implementing the requirements of Part C of the Act or that there is a substantial failure to comply with any requirement under Part C of the Act by an EIS program, the department shall withhold, in whole or in part, any further payments to the EIS provider under Part C of the Act. In addition, the department may refer the matter to appropriate authorities, which include but are not limited to the Iowa department of justice or the auditor of state.

120.704(4) Rule of construction. The listing of specific enforcement mechanisms in this rule shall not be construed to limit the enforcement mechanisms at the department's disposal in its enforcement of this rule or any other rule in this chapter.

281—120.705(34CFR303) Withholding funds.

120.705(1) General. As a consequence of a determination made under rule 281—120.703(34CFR303) or enforcement of any provision of Part C of the Act and this chapter, the department may withhold some or all of the funds from an EIS provider or a program or service of an EIS provider.

120.705(2) Hearing. If the department intends to withhold funds, it shall provide notice and an opportunity for a hearing to an EIS provider. If a hearing is requested, the department may suspend payments to the EIS provider, suspend the authority of the EIS provider to obligate funds, or both, until a decision is made after the hearing. A hearing under this rule, which shall not be a contested case under Iowa Code chapter 17A, shall be requested within 30 days of notice of withholding by requesting a hearing before the director of the Iowa department of education or the director's designee. The presiding officer at the hearing shall consider the purposes of Part C of the Act and of this chapter and shall determine whether the state abused its discretion in its decision under subrule 120.705(1).

120.705(3) Reinstatement. If the EIS provider substantially rectifies the condition that prompted the initial withholding under subrule 120.705(1), then the department may reinstate payments. If an EIS provider disagrees with the department's decision that the provider has not substantially rectified the condition that prompted the initial withholding under subrule 120.705(1), the provider may request a hearing under subrule 120.705(2).

281—120.706(34CFR303) Public attention. Whenever the state receives notice that the Secretary is proposing to take or is taking an enforcement action pursuant to 34 CFR §303.704, the state must, by means of a public notice, take such measures as may be necessary to bring the pendency of an action pursuant to Section 616(e) of the Act and 34 CFR §303.704 to the attention of the public within the state, including by posting the notice on the department's Web site and distributing the notice to the media and to EIS programs.

281—120.707 Reserved.

281—120.708(34CFR303) State enforcement. Nothing in this division may be construed to restrict the state from utilizing any other authority available to it to monitor and enforce the requirements of the Act.

281—120.709(34CFR303) State consideration of other state or federal laws. In making the determinations required by subrule 120.703(2), in taking actions pursuant to rule 281—120.704(34CFR303), and in taking any other action under this chapter, the department may consider whether any agency or provider has complied with any other applicable state or federal law, including but not limited to education law or disability law, or with any corrective action ordered by any competent authority for violation of such a law.

281—120.710 to 120.719 Reserved.

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281—120.720(34CFR303) Data requirements—general.

120.720(1) *General requirements.* The department must annually report to the Secretary and to the public on the information required by Section 618 of the Act at the times specified by the Secretary.

120.720(2) *Manner of reporting.* The department must submit the report to the Secretary in the manner prescribed by the Secretary.

281—120.721(34CFR303) Annual report of children served—report requirement.

120.721(1) *Date of count.* For the purposes of the annual report required by Section 618 of the Act and rule 281—120.720(34CFR303), the department must count and report the number of infants and toddlers receiving early intervention services on any date between October 1 and December 1 of each year.

120.721(2) *Information in report.* The report must include:

a. The number and percentage of infants and toddlers with disabilities in the state, by race, gender, and ethnicity, who are receiving early intervention services (and include in this number any children reported to the department by tribes, tribal organizations, and consortia under 34 CFR 303.731(e)(1));

b. The number and percentage of infants and toddlers with disabilities, by race, gender, and ethnicity, who, from birth through age two, stopped receiving early intervention services because of program completion or for other reasons; and

c. The number and percentage of at-risk infants and toddlers (as defined in Section 632(1) of the Act), by race and ethnicity, who are receiving early intervention services under Part C of the Act.

120.721(3) Reserved.

120.721(4) *Dispute prevention and resolution data.* The report shall include the number of due process complaints filed under Section 615 of the Act, the number of hearings conducted and the number of mediations held, and the number of settlement agreements reached through such mediations.

281—120.722(34CFR303) Data reporting.

120.722(1) *Protection of identifiable data.* The data described in Section 618(a) of the Act and in rule 281—120.721(34CFR303) must be publicly reported by the state in a manner that does not result in disclosure of data identifiable to individual children.

120.722(2) *Sampling.* If permitted by the Secretary, the state may obtain data in Section 618(a) of the Act through sampling.

281—120.723(34CFR303) Annual report of children served—certification. The department must include in its report a certification signed by an authorized official of the department that the information provided under rule 281—120.721(34CFR303) is an accurate and unduplicated count of infants and toddlers with disabilities receiving early intervention services.

281—120.724(34CFR303) Annual report of children served—other responsibilities of the department. In addition to meeting the requirements of rules 281—120.721(34CFR303) through 281—120.723(34CFR303), the department must conduct its own child count or use EIS providers to complete its child count. If the department uses EIS providers to complete its child count, then the department must establish procedures to be used by EIS providers in counting the number of children with disabilities receiving early intervention services; establish dates by which those EIS providers must report to the department to ensure that the state complies with subrule 120.721(1); obtain certification from each EIS provider that an unduplicated and accurate count has been made; aggregate the data from the count obtained from each EIS provider and prepare the report required under rules 281—120.721(34CFR303) through 281—120.723(34CFR303); and ensure that documentation is maintained to enable the department and the Secretary to audit the accuracy of the count.

281—120.725 to 120.800 Reserved.

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DIVISION X
OTHER PROVISIONS**281—120.801(34CFR303) Early ACCESS system—state level.**

120.801(1) *Lead agency.* The Iowa department of education was appointed lead agency on June 24, 1987. Responsibilities of the lead agency include:

- a.* Developing and implementing policies and procedures regarding the types of information to be gathered and the policies and parameters for sharing of information across agencies and programs, as well as such information that might be necessary for an annual report to the governor and the U.S. Department of Education;
- b.* Monitoring the agencies, institutions and organizations that provide early intervention services and supports;
- c.* Enforcing any obligations imposed under Part C of the Act on the agencies listed in paragraph 120.801(1)“*b*”;
- d.* Providing technical assistance, if necessary, to the agencies, institutions and organizations listed in paragraph 120.801(1)“*b*”;
- e.* Correcting deficiencies that are identified through monitoring;
- f.* Adopting and carrying out complaint procedures;
- g.* Mediating any interagency disputes regarding early intervention services;
- h.* Establishing policies related to how early intervention services to eligible children and their families shall be paid for;
- i.* Establishing procedures to ensure the timely provision of services;
- j.* Ensuring that the following functions and services are provided at public expense:
 - (1) Child find requirements;
 - (2) Evaluation and assessment functions;
 - (3) Service coordination;
 - (4) Development and review of IFSPs;
 - (5) Implementation of procedural safeguards; and
 - (6) Other components of the statewide system of Early ACCESS;
- k.* Maintaining a data system to be utilized for gathering information regarding early intervention services provided for eligible children in Early ACCESS; and
- l.* Monitoring use of funds.

120.801(2) *Signatory agencies.* The departments of education, public health, and human services and the child health specialty clinics shall enter into an interagency agreement to formalize their joint commitments to the establishment and ongoing implementation and evaluation of a comprehensive, integrated, interagency Early ACCESS system. The Iowa department of education is responsible for providing education programs and services for preschool and school-age students, including children with disabilities, from birth through 21 years of age. The Iowa department of human services administers social service programs in order to help and empower individuals and families to become increasingly self-sufficient and productive. The Iowa department of public health administers public health programs in order to promote and protect the health of Iowans. The child health specialty clinics are the statewide public health program for children with special health care needs, as designated by the legislature.

120.801(3) *Interagency agreement.* In addition to the requirements set forth elsewhere in this chapter, the agreement between signatory agencies shall outline the commitment of these agencies to the implementation of an interagency, integrated system of Early ACCESS and:

- a.* Reflect the interagency vision and guiding principles of Early ACCESS;
- b.* Define the population to be served;
- c.* Identify roles, responsibilities and expectations of the signatory agencies;
- d.* Outline financial responsibilities of the signatory agencies;
- e.* Describe parameters for policy development and management decisions;
- f.* Describe procedures for resolving disputes;
- g.* Identify transition activities from Part C services;

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- h.* Describe child find efforts; and
- i.* Describe the roles and responsibilities of the signatory agencies and assigned staff.

281—120.802(34CFR303) Interagency service planning. An IFSP process shall be developed by the lead agency and shall be reviewed and approved by the signatory agencies. The process shall be used by all signatory agencies to document the ongoing work between families and providers across all agencies that are providing a service or resource to meet identified needs.

281—120.803(34CFR303) System-level disputes. System-level disputes involve conflicts over the roles or responsibilities of an agency partner within the Early ACCESS system. System-level disputes may involve financial matters, the implementation of Early ACCESS system aspects that are not law or rules, such as interagency agreements and policies and procedures, or the implementation of provisions of the interagency agreement. The interagency agreement shall detail the resolution of informal and formal intra-agency and interagency system-level disputes.

281—120.804(34CFR303) Early ACCESS system—regional and community levels.

120.804(1) Early ACCESS grantees. Early ACCESS grantees shall have the fiscal and legal obligation for ensuring that the Early ACCESS system is carried out regionally. Early ACCESS grantees shall be designated by the department and shall exist, at a minimum, in geographic areas that ensure statewide coverage as determined by the department.

a. Policies. Each grantee shall establish in accordance with this chapter the policies pertinent to a regional Early ACCESS system and shall make such policies available to the department upon request. At a minimum, such policies shall include the following:

- (1) Policy to ensure that appropriate early intervention services are available to all eligible children in the state and their families, including Indian infants and toddlers and their families residing on a reservation or settlement geographically located in the state;
- (2) Policy to ensure that all infants and toddlers in the state who are eligible for services under this chapter are identified, located, and evaluated and that an effective method to determine which children are receiving needed early intervention services is developed and implemented;
- (3) Policy regarding the development and implementation of individualized family service plans;
- (4) Policy for the establishment and maintenance of standards to ensure that personnel necessary to carry out the requirements of this chapter are appropriately and adequately prepared and trained;
- (5) Policy pertaining to contracting or making other arrangements with public or private service providers to provide early intervention services and service coordination;
- (6) Policy to ensure a smooth transition to preschool or other appropriate services for children receiving early intervention services under this chapter; and
- (7) Any other policy required to carry out the purposes of this chapter.

b. Procedures. Each grantee shall develop, in accordance with this chapter, written procedures pertinent to the implementation of a regional Early ACCESS system, and shall make such procedures available to the department upon request. At a minimum, such procedures shall include the following:

- (1) Procedures to ensure that all infants and toddlers who are eligible for services under this chapter are identified, located, and evaluated and that an effective method to determine which children are receiving needed early intervention services is developed and implemented;
- (2) Procedures for use by primary referral sources for referring a child to the appropriate public agency within the system for evaluation and assessment or, as appropriate, the provision of services;
- (3) Procedures to ensure provision of early intervention services and service coordination, including the appointment of service coordinators;
- (4) Procedures to ensure documentation and the development and implementation of an interim IFSP, when circumstances warrant under this chapter;
- (5) Procedures for conducting nondiscriminatory evaluation and assessment;
- (6) Procedures for the development and implementation of individualized family service plans;

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- (7) Procedures for the establishment and maintenance of standards to ensure that personnel necessary to carry out the purposes of this chapter are appropriately and adequately prepared and trained;
- (8) Procedures for ensuring procedural safeguards that meet the requirements of this chapter;
- (9) Procedures for ensuring maintenance and confidentiality of records;
- (10) Procedures to allow parties to disputes to resolve the disputes through a mediation process;
- (11) Procedures for providing mediation for the timely administrative resolution of complaints by parents regarding an individual child;
- (12) Procedures for resolving a complaint that any public agency is violating a requirement of Part C of the Act;
- (13) Procedures related to how services to eligible children and their families will be paid for under the state's Early ACCESS program;
- (14) Procedures for the timely provision of services, ensuring that no service to which a child is entitled is delayed or denied because of disputes between agencies regarding financial or other responsibilities;
- (15) Procedures for resolving intra-agency and interagency disputes about payments for a given service or about other matters related to the state's Early ACCESS program in accordance with any applicable interagency agreement and with this chapter;
- (16) Procedures to ensure that services are provided to eligible children and their families in a timely manner pending the resolution of disputes among public agencies or service providers;
- (17) Procedures for securing the timely reimbursement of funds; and
- (18) Any other procedures required to carry out the purposes of this chapter.

c. Collaboration. Early ACCESS grantees shall collaborate with local representatives of signatory agencies, community partners, and families in the development, implementation and monitoring of policies and procedures described in this rule. Early ACCESS grantees shall designate an individual who has primary responsibility for coordinating regional implementation and serving as a liaison to the department.

120.804(2) Community partners. Community partners include state and local representatives of signatory agencies, as well as other regional and community agencies and providers, public and private, including physicians, Early Head Start, child care providers, early childhood Iowa areas, and health programs, that work with Early ACCESS when providing early intervention services or other supports such as supporting family participation in improving the Early ACCESS system, early identification of eligible children, service coordination, provision of other needed services or resources, and other efforts to improve the Early ACCESS system.

281—120.805(34CFR303) Provision of year-round services. Each Early ACCESS grantee shall ensure that Early ACCESS components and services are available 12 months a year to meet the needs of eligible children and their families.

281—120.806(34CFR303) Evaluation and improvement. Each grantee, in conjunction with signatory agencies or the department, or both, shall implement activities designed to evaluate and improve the Early ACCESS system. These activities shall document the performance of eligible children who receive early intervention services.

281—120.807(34CFR303) Research. Each grantee shall cooperate in research activities designed to evaluate and improve the Early ACCESS system when such activities are sponsored by the department, or a signatory agency when approved by the department, to assess and ensure the effectiveness of efforts to serve eligible children.

281—120.808(34CFR303) Records and reports. Each signatory agency or grantee shall maintain sufficient records and reports for audit by the department. Records and reports shall include at a minimum:

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1. State-approved or state-recognized certification, licensing, registration, or other comparable requirements for all personnel providing early intervention services.
2. All IFSP meetings and annual or periodic reviews for each eligible child.
3. Data required for federal and state reporting.

281—120.809(34CFR303) Information for department. Each signatory agency or grantee shall provide the department with information necessary to enable the department to carry out its duties under Part C of the Act and this chapter. This information, including such quantitative and qualitative data as the department may require, shall be submitted in a manner and at a time determined by the department. Failure to submit timely and accurate information may be considered by the department in making the determinations under rule 281—120.703(34CFR303) or in taking any other action to enforce Part C of the Act or this chapter.

281—120.810(34CFR303) Public information. Each agency must make available to parents of children with disabilities and to the general public all documents relating to the eligibility of the agency under Part C of the Act.

281—120.811(34CFR303) Dispute resolution: practice before mediators and administrative law judges. Unless otherwise provided by this chapter, any mediation conference or due process hearing under Division VI of this chapter shall be conducted according to the rules contained in 281—41.1000(256B,34CFR300) through 281—41.1016(256B,34CFR300).

281—120.812(34CFR303) References to federal law. All references in this chapter to provisions of the United States Code or the Code of Federal Regulations are to those provisions in effect on September 28, 2011.

281—120.813(34CFR303) Severability. Should any rule or subrule in this chapter be declared invalid by a court of competent jurisdiction, every other rule and subrule not affected by that declaration of invalidity shall remain valid.

These rules are intended to implement the Individuals with Disabilities Education Act as amended through July 1, 2005, and Part 303 of Title 34 of the Code of Federal Regulations published in the Federal Register on September 28, 2011.

ARC 0023C

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 17A.3 and 34A.22, the Homeland Security and Emergency Management Division proposes to amend Chapter 7, “Local Emergency Management,” Iowa Administrative Code.

The Homeland Security and Emergency Management Division proposes to amend Chapter 7 to reflect changes made to Iowa Code chapter 29C in 2011 Iowa Acts, Senate File 315. Additionally, these proposed amendments change the planning requirements for local emergency management commissions in paragraph 7.3(4)“d.”

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605](cont'd)

Consideration will be given to all written suggestions or comments on the proposed amendments received on or before March 13, 2012. Such written materials should be sent to the Administrative Rules Coordinator, Iowa Homeland Security and Emergency Management Division, 7105 N.W. 70th Avenue, Camp Dodge, Building W-4, Johnston, Iowa 50319; fax (515)725-3260.

Also, there will be a public hearing on March 14, 2012, at 1 p.m. in the Homeland Security and Emergency Management Division Conference Room, Building W-4, Camp Dodge, Johnston, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special requirements, such as hearing or mobility impairments, should contact the Homeland Security and Emergency Management Division and advise of specific needs.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement 2011 Iowa Code Supplement chapter 29C.

The following amendments are proposed.

ITEM 1. Adopt the following **new** definitions of “Commission” and “Local emergency management agency” in rule **605—7.2(29C)**:

“*Commission*” means a local emergency management commission or joint emergency management commission.

“*Local emergency management agency*” means a countywide, joint county-municipal agency organized to administer this chapter under the authority of a commission.

ITEM 2. Amend subrule 7.3(1), introductory paragraph, as follows:

7.3(1) The county board of supervisors, city councils, and ~~school district boards of directors~~ sheriff in each county shall cooperate with the homeland security and emergency management division to establish a local emergency management commission to carry out the provisions of 2011 Iowa Code Supplement chapter 29C.

ITEM 3. Amend subrule **7.3(2)**, unnumbered paragraph, as follows:

The bylaws, as adopted, shall be signed by each member of the commission. The commission shall record the signed bylaws with the county recorder and shall forward a copy of the bylaws to the administrator of the state homeland security and emergency management division.

ITEM 4. Amend subparagraph **7.3(4)“a”(1)** as follows:

(1) Establish and maintain ~~an~~ a local emergency management agency responsible for the local emergency management program. The primary responsibility of this agency is to develop and maintain a comprehensive emergency management capability in cooperation with other governmental agencies, volunteer organizations, and private sector organizations. The name of this agency shall be the (county name) county emergency management agency.

ITEM 5. Amend subparagraph **7.3(4)“a”(7)** as follows:

(7) Coordinate emergency management activities and services among county and city governments and the private sector agencies ~~within the county~~ under the jurisdiction of the commission.

ITEM 6. Rescind paragraph **7.3(4)“d”** and adopt the following **new** paragraph in lieu thereof:

d. Planning.

(1) The commission shall develop a comprehensive emergency plan that is capabilities-based, multihazard and multifunctional in nature. The plan shall conform to the Comprehensive Preparedness Guide 101 as established by the Federal Emergency Management Agency.

(2) Plans shall contain the following common elements:

1. Identification of the functional roles and responsibilities of internal and external agencies, organizations, departments, and individuals during mitigation, preparedness, response and recovery.

2. Establishment and identification of lines of authority for those agencies, organizations, departments, and individuals.

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605](cont'd)

(3) Plans shall be regularly reviewed and amended as appropriate in accordance with a five-year schedule established by the commission, which shall include at a minimum:

1. A complete review, and amendment as appropriate, at a minimum of every five years. However, a review, and amendment as appropriate, of the hazardous materials portion and of a minimum of 20 percent of the remaining annexes or portions of the plan shall be conducted on a yearly basis. The complete operations plan must be reviewed entirely, and amended as appropriate, every five years. A copy of the portions of the plan that are reviewed, regardless of amendment, must be certified and submitted to the division for approval by August 1 of each year.

2. Recovery and mitigation plans must also be reviewed, and amended as appropriate, certified and submitted to the division for approval within 180 days of the formal closing of the disaster incident period for a presidential declaration for major disaster.

(4) To be certified, the plan must be adopted by the members of the commission and attested to by the chairperson and the local emergency management coordinator on a signature document as specified by the division.

(5) In addition to the standards heretofore established in paragraph 7.3(4) "d," the operations plan shall include provisions for damage assessment.

(6) Hazardous materials plans shall meet the minimum requirements of federal law, 42 U.S.C. §11003.

(7) Counties designated as risk or host counties for a nuclear facility emergency planning zone shall meet the standards and requirements as published by the United States Nuclear Regulatory Commission and the Federal Emergency Management Agency in NUREG-0654, FEMA-REP-1, Rev. 1, March 1987.

(8) Commissions participating in or conducting exercises or experiencing real disaster incidents which require after-action and corrective action reports have 180 days from the date of the publication of the corrective action report to incorporate the corrective actions, as appropriate, into the commission's plans.

(9) Within 60 calendar days from the receipt of the plan, the division shall review plans or portions of plans submitted by a commission for approval. The division shall notify the local emergency management agency in writing of the approval or nonapproval of the plan. If the plan is not approved, the division shall state the specific standard or standards that are not being met and offer guidance on how the plan may be brought into compliance.

(10) A comprehensive emergency plan shall not be considered approved by the homeland security and emergency management division as required in 2011 Iowa Code Supplement subsection 29C.9(8) unless such plan adheres to and meets the minimum standards as established in paragraph 7.3(4) "d."

(11) 2011 Iowa Code Supplement section 29C.6 provides that state participation in funding financial assistance in a presidentially declared disaster is contingent upon the commission's having on file a state-approved, comprehensive emergency plan as provided in 2011 Iowa Code Supplement subsection 29C.9(8). Plans must be received by the division within 180 days of the formal closing of the disaster incident period for a presidential declaration for major disaster for the affected jurisdiction and must be approved by the division within 240 days of the formal closing of the disaster incident period for public or private nonprofit entities within the county to be eligible to receive state financial assistance.

ITEM 7. Amend paragraph 7.3(4) "h" as follows:

h. Operations and procedures. The commission should encourage public and private agencies, ~~having~~ which have defined responsibilities in the ~~countywide~~ comprehensive emergency operations plan, to develop standard operating procedures, policies, and directives in support of the plan.

ITEM 8. Amend subparagraph 7.3(4) "i" (4) as follows:

(4) The commission should encourage individuals, other than the emergency management coordinator, with emergency management responsibilities as defined in the ~~countywide~~ comprehensive emergency operations plan, to complete, within two years of appointment, training consistent with their emergency management responsibilities.

ITEM 9. Amend numbered paragraph 7.3(4) "k" (2) "4" as follows:

4. The capability to communicate with ~~special~~ functional needs populations.

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605](cont'd)

ITEM 10. Amend subrule 7.3(5) as follows:

7.3(5) Two or more commissions. Two or more ~~local~~ commissions may, upon review by the state administrator and with the approval of their respective boards of supervisors, ~~and cities, and sheriffs,~~ enter into agreements pursuant to Iowa Code chapter 28E for the joint coordination and administration of emergency management services throughout the multicounty area.

ITEM 11. Amend rule 605—7.4(29C), catchwords, as follows:

605—7.4(29C) Emergency Local emergency management coordinator.

ITEM 12. Amend subrule 7.4(1) as follows:

7.4(1) Each ~~county emergency management commission or joint~~ commission shall appoint ~~an a~~ local emergency management coordinator who shall serve at the pleasure of the commission. The commission shall delegate to the emergency management coordinator the authority to fulfill the commission's and coordinator's duties as provided in 2011 Iowa Code Supplement sections 29C.9 and 29C.10, as further described in subrule 7.3(4), and as otherwise assigned and authorized by the commission.

ITEM 13. Amend paragraph **7.4(2)“a”** as follows:

a. A member of a ~~local or joint~~ commission shall not be appointed as the local emergency management coordinator.

ITEM 14. Amend subrule 7.4(3), introductory paragraph, as follows:

7.4(3) ~~Emergency~~ Local emergency management coordinator qualifications. Each person appointed after July 1, 1990, as ~~an a~~ local emergency management coordinator shall meet the following requirements with regard to education, abilities, experience, knowledge and skills:

ITEM 15. Amend subrule 7.4(4), introductory paragraph, as follows:

7.4(4) ~~Emergency~~ Local emergency management coordinator continuing education requirements. Each local emergency management coordinator shall meet the following educational development requirements. The administrator may extend the time frame for meeting these continuing education requirements upon request from the ~~local or joint~~ commission.

ITEM 16. Amend paragraph **7.4(4)“a,”** introductory paragraph, as follows:

a. Within five years of appointment as ~~an a~~ local emergency management coordinator, the person must complete the following ~~ten independent~~ study courses as ~~prescribed by the Federal Emergency Management Agency:~~

ITEM 17. Amend paragraph **7.4(4)“b”** as follows:

b. Within five years of appointment as ~~an a~~ local emergency management coordinator, the person must complete the professional development series of courses as prescribed by the Federal Emergency Management Agency.

ITEM 18. Amend rule 605—7.5(29C) as follows:

605—7.5(29C) Local commission or joint commission Commission personnel.

7.5(1) Personnel for the ~~local commission or joint~~ commission, including the coordinator, operations officers, and emergency management assistants, shall be considered as employees of that ~~local~~ commission to ~~include the coordinator, operations officers, and emergency management assistants.~~

7.5(2) The ~~local or joint~~ commission shall determine the personnel policies of the agency to include holidays, rate of pay, sick leave, vacation, and health benefits. The ~~local~~ commission may adopt existing county or city policies in lieu of writing ~~their~~ the commission's own policies.

ITEM 19. Amend rule 605—7.6(29C), introductory paragraph, as follows:

605—7.6(29C) Damage assessment and financial assistance for disaster recovery. Disaster-related expenditures and damages incurred by local governments, private nonprofit entities, individuals, and businesses may be reimbursable and covered under certain state and federal disaster assistance programs. Preliminary damage assessments shall be provided to the homeland security and emergency management

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605](cont'd)

division prior to the governor's making a determination that the magnitude and impact are sufficient to warrant a request for a presidential disaster declaration.

ITEM 20. Amend subrule 7.6(1) as follows:

7.6(1) *Local preliminary damage assessment and impact statement.* The ~~county local~~ emergency management coordinator shall be responsible for the coordination and collection of damage assessment and impact statement information immediately following a disaster that affects the ~~county or any municipality within the county jurisdiction.~~

ITEM 21. Amend subrule 7.6(2) as follows:

7.6(2) *Damage assessment guidance and forms to be provided.* The state homeland security and emergency management division will provide guidance regarding the methodologies to be used in collecting damage assessment and impact statement information and shall provide the forms and format by which this information shall be recorded.

ITEM 22. Amend subrule 7.6(5) as follows:

7.6(5) *Forfeiture of assistance funding.* Failure to provide timely and accurate damage assessment and impact statement information may jeopardize or eliminate an applicant's ability to receive federal and state disaster assistance funds that may otherwise be available.

State participation in funding of disaster financial assistance in a presidentially declared disaster shall be contingent upon the ~~local or joint emergency management~~ commission's having on file a state-approved, comprehensive, ~~countywide~~ emergency operations plan which meets the standards as provided in ~~subrule paragraph 7.3(4), paragraph "d."~~

ITEM 23. Amend rule 605—7.7(29C), introductory paragraph, as follows:

605—7.7(29C) *Emergency management performance grant (EMPG) program.* Emergency management is a joint responsibility of the federal government, the states, and their political subdivisions. "Emergency management" means all those activities and measures designed or undertaken to mitigate against, prepare for, respond to, or recover from the effects of a human-caused, technological, or natural hazard. The purpose of the emergency management performance grant program is to provide the necessary assistance to ~~local governments~~ commissions to ensure that a comprehensive emergency ~~preparedness~~ system exists for all hazards.

ITEM 24. Amend subrule 7.7(1) as follows:

7.7(1) *Eligibility.* ~~Local or joint emergency management commissions~~ Commissions may be eligible for funding under the state and emergency management performance grant program by meeting the requirements, conditions, duties and responsibilities for ~~emergency management~~ commissions and ~~county local~~ emergency management coordinators established in rules ~~605—7.3(29C) and 605—7.4(29C)~~. In addition, the ~~local~~ commission shall ensure that the coordinator works an average of 20 hours per week or more toward the emergency management effort. ~~Joint commissions~~ Commissions formed under subrule 7.5(5) shall ensure that the coordinator works an average of 40 hours per week toward the emergency management effort.

ITEM 25. Amend subrule 7.7(2) as follows:

7.7(2) *Application for funding.* ~~Local or joint commissions~~ Commissions may apply for funding under the emergency management performance grant program by entering into an agreement with the division and by completing the necessary application and forms, as published and distributed yearly to each commission by the division.

ITEM 26. Amend paragraph **7.7(3)"a"** as follows:

a. The homeland security and emergency management division shall allocate funds to eligible ~~local or joint~~ commissions within 45 days of receipt of notice from the federal Department of Homeland Security, Preparedness Directorate, Office of Grants and Training, that such funds are available. The division shall use a formula for the allocation of funds based upon the number of eligible applicants, the part-time or full-time status of the coordinator, 50 percent equal-share base, and 50 percent population

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605](cont'd)

base. The total allocation of funds for an applicant may not exceed the lesser of \$39,000 or the amount requested by the applicant.

ITEM 27. Amend paragraph 7.7(3)“c” as follows:

c. Funds will be reimbursed to ~~local and joint~~ commissions on a federal fiscal year, quarterly basis; and such reimbursement will be based on eligible claims made against the ~~local or joint~~ commission's allocation. In no case will the allocation or reimbursement of funds be greater than one-half of the total cost of eligible emergency management related expenses.

ITEM 28. Amend subrule 7.7(4), introductory paragraph, as follows:

7.7(4) Compliance. The administrator may withhold or recover emergency management performance grant funds from any ~~local or joint~~ commission for its failure or its coordinator's failure to meet any of the following conditions:

ITEM 29. Amend paragraph 7.7(4)“c” as follows:

c. Adopt a comprehensive ~~countywide~~ emergency operations plan that meets current standards.

ITEM 30. Amend subrule 7.7(5) as follows:

7.7(5) Serious nonperformance problems. If a ~~local or joint~~ commission cannot demonstrate achievement of agreed-upon work products, the division is empowered to withhold reimbursement or to recover funds from the ~~local or joint~~ commission. Corrective action procedures are designed to focus the commission's attention on nonperformance problems and to bring about compliance with the cooperative agreement. Corrective action procedures, which could lead to sanction, may be enacted as soon as the administrator becomes aware of serious nonperformance or noncompliance. This realization may arise from staff visits or other contacts with the local emergency management agency or commission, from indications in the commission's or coordinator's quarterly report that indicate a significant shortfall from planned accomplishments, or from the commission's or coordinator's failure to report. Financial sanctions are to be applied only after corrective action remedies fail to result in accomplishment of agreed-upon work product.

ITEM 31. Amend paragraph 7.7(6)“a” as follows:

a. *Informal corrective action.* As a first and basic step to correcting nonperformance, a designated member of the state homeland security and emergency management division staff will visit, call or write the local emergency management coordinator to determine the reason for nonperformance and seek an agreeable resolution.

ITEM 32. Amend paragraph 7.7(6)“b” as follows:

b. *Formal corrective action.* On those occasions when there is considerable discrepancy between agreed-upon and actual performance and response to informal corrective action is not sufficient or agreeable, the division will take the following steps:

(1) ~~Emergency~~ Homeland security and emergency management division staff will review the scope of work, as agreed to in the cooperative agreement, to determine the extent of nonperformance. To focus attention on the total nonperformance issue, all instances of nonperformance will be addressed together in a single correspondence to the ~~local or joint~~ commission.

(2) The administrator will prepare a letter to the ~~local or joint~~ commission which will contain, at a minimum, the following information:

1. The reasons why the division believes the ~~local or joint~~ commission may be in noncompliance, including the specified provisions in question.

2. A description of the efforts made by the division to resolve the matter and the reasons these efforts were unsuccessful.

3. A declaration of the ~~local or joint~~ commission's commitment to accomplishing the work agreed upon and specified in the comprehensive cooperative agreement and its importance to the emergency management capability of the local jurisdiction.

4. A description of the exact actions or alternative actions required of the ~~local or joint~~ commission to bring the problem to an agreed resolution.

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605](cont'd)

5. A statement that this letter constitutes the final no-penalty effort to achieve a resolution and that financial sanctions provided for in these rules will be undertaken if a satisfactory response is not received by the division within 30 days.

ITEM 33. Amend subrule 7.7(7) as follows:

7.7(7) Financial sanctions. If the corrective actions heretofore described fail to produce a satisfactory resolution to cases of serious nonperformance, the administrator may invoke the following financial sanction procedures:

a. Send a “Notice of Intention to Withhold Payment” to the chairperson of the ~~local or joint~~ commission. This notice shall also contain notice of a reasonable time and place for a hearing, should the ~~local or joint~~ commission request a hearing before the administrator.

b. Any request by a ~~local or joint~~ commission for a hearing must be made in writing, to the division, within 15 days of receipt of the Notice of Intention to Withhold Payment.

c. Any hearing under the Notice of Intention to Withhold Payment shall be held before the administrator. However, the administrator may designate an administrative law judge to take evidence and certify to the administrator the entire record, including findings and recommended actions.

d. The ~~local or joint~~ commission shall be given full opportunity to present its position orally and in writing.

e. If, after a hearing, the administrator finds sufficient evidence that the ~~local or joint~~ commission has violated established rules and regulations or the terms and conditions of the cooperative agreement, the administrator may withhold such contributions and payments as may be considered advisable, until the failure to expend funds in accordance with said rules, regulations, terms and conditions has been corrected or the administrator is satisfied that there will no longer be any such failure.

f. If upon the expiration of the 15-day period stated for a hearing, a hearing has not been requested, the administrator may issue the findings and take appropriate action as described in the preceding paragraph: 7.7(7)“e.”

g. If the administrator finds there is serious nonperformance by the commission or its coordinator and issues an order to withhold payments to the ~~local or joint~~ commission as described in this rule, the commission shall not receive funds under the emergency management performance grant program for the remainder of the federal fiscal year in which the order is issued and one additional year or until such time that all issues of nonperformance have been agreeably addressed by the division and the commission.

h. Any emergency management ~~performe~~ performance grant program funds withheld or recovered by the division as a result of this process shall be reallocated at the end of the federal fiscal year to the remaining participating ~~counties~~ commissions.

ARC 0011C

LABOR SERVICES DIVISION[875]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 89A.3, the Elevator Safety Board hereby gives Notice of Intended Action to amend Chapter 66, “Waivers and Variances from Administrative Rules by the Elevator Safety Board,” Chapter 68, “Declaratory Orders by the Elevator Safety Board,” Chapter 69, “Contested Cases Before the Elevator Safety Board,” Chapter 71, “Administration of the Conveyance Safety Program,” Chapter 72, “Conveyances Installed On or After January 1, 1975,” and Chapter 73, “Conveyances Installed Prior to January 1, 1975,” Iowa Administrative Code.

LABOR SERVICES DIVISION[875](cont'd)

Iowa Code subsection 89A.13(7) requires that every three years the Elevator Safety Board conduct a comprehensive review of existing rules, regulations, and standards. Most of these amendments are a direct result of the review process conducted by the Board during 2011.

These amendments propose to make editorial and technical changes; amend rules to conform to statutory authority; adopt by reference the most recent editions of the relevant American Society of Mechanical Engineers (ASME) codes, except for one narrow requirement concerning telephone lines; mandate the use of an acceptance checklist for installation of new conveyances; and adopt requirements for remote manipulation of conveyances.

The purposes of these amendments are to protect the health and safety of the public, make the rules more clear, align the language with the authority of Iowa Code chapters 17A and 89A, facilitate installation of new technologies in Iowa, and implement legislative intent.

If requested in accordance with Iowa Code section 17A.4(1)“b” by the close of business on March 13, 2012, a public hearing will be held on March 14, 2012, at 9 a.m. in the Capitol View Room at 1000 East Grand Avenue, Des Moines, Iowa. Interested persons will be given the opportunity to make oral statements and file documents concerning the proposed amendments. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should call (515)242-5869 in advance to arrange access or other needed services.

Written data, views, or arguments to be considered in adoption shall be submitted by interested persons no later than March 14, 2012, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to kathleen.uehling@iwd.iowa.gov.

No variance procedures are included in these rules. Applicable variance procedures are set forth in 875—Chapter 66.

After analysis and review of this rule making, no adverse impact on jobs is expected. This rule making is designed to reduce costs for elevator installation companies and state inspectors. Further, this rule making is designed to expedite the elevator installation process for businesses. Lastly, this rule making does require a mechanic on site for off-site manipulation. The proposed language is narrowly tailored to ensure safety without adding unnecessary costs or burdens on the business sector.

These amendments are intended to implement Iowa Code chapter 89A.

The following amendments are proposed.

ITEM 1. Amend subrule 66.10(6) as follows:

66.10(6) *Time period of waiver.* A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be ~~impractical~~ impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the board, a waiver may be renewed if the board finds that grounds for a waiver continue to exist.

ITEM 2. Amend paragraph **68.1(1)“b”** as follows:

b. A citation and the relevant language of the specific statutes, rules, ~~policies, decisions,~~ or orders whose applicability is questioned, and any other relevant law.

ITEM 3. Amend rule 875—69.2(17A,89A) as follows:

875—69.2(17A,89A) Appeal to the board. ~~A decision by the commissioner to deny, suspend, or revoke an operating permit; a decision by the commissioner to deny a petition for reconsideration; and a deemed denial of a petition for reconsideration are subject to appeal to the board. At a minimum, an appeal shall include a short and concise statement of the basis for the appeal. The required form for an appeal to the board is available on the board’s Web site at <http://www.iowaworkforce.org/labor/elevatorboard.htm>. An appeal to the board shall be a contested case proceeding subject to the provisions of Iowa Code chapter 17A. The commissioner shall have an automatic right of intervention in any appeal and shall defend the ruling in a contested case proceeding. The deadlines for filing an appeal are set forth below:~~

69.2(1) A decision by the commissioner to deny, suspend, or revoke an operating permit; a deemed denial of a petition for reconsideration; and the commissioner’s ruling on a petition for reconsideration are subject to appeal to the board.

LABOR SERVICES DIVISION[875](cont'd)

69.2(2) An appeal to the board shall be a contested case proceeding subject to the provisions of Iowa Code chapter 17A.

69.2(3) The commissioner shall have an automatic right of intervention in any appeal and shall defend the ruling in a contested case proceeding.

69.2(4) Only those issues raised by the petitioner in the petition for reconsideration will be preserved for appeal to the board in an appeal from the deemed denial of a petition for reconsideration and an appeal from the commissioner's ruling on a petition for reconsideration.

69.2(5) At a minimum, an appeal shall include a short and concise statement of the basis for the appeal. The required form for an appeal to the board is available on the board's Web site at <http://www.iowaworkforce.org/labor/elevatorboard.htm>.

69.2(6) The deadlines for filing an appeal are set forth below:

69.2(1) a. *Reconsideration of an inspection report.* An appeal must be filed in writing with the board within 30 calendar days of the earlier of either the issuance of the commissioner's written ruling on a petition for reconsideration or the deemed denial of a petition for reconsideration.

69.2(2) b. *Notification of intent to deny, suspend, or revoke an operating permit.* An appeal must be filed in writing with the board within 30 calendar days of the appellant's receipt of the notification of intent to deny, suspend, or revoke an operating permit.

ITEM 4. Amend subrule 69.3(1) as follows:

69.3(1) In order to preserve the ability of board members to participate in decision making, ~~parties who desire participation in an informal review must therefore waive their right to seek disqualification of a board member based solely on the board member's participation in the informal review. Parties would not be waiving their right to seek disqualification on any other ground. By electing to participate in informal review, a party accordingly agrees that a participating board member is not disqualified from acting as a presiding officer in a later contested case proceeding. a party who elects an informal review under this rule waives the party's right to seek disqualification of a board member as a presiding officer in a later contested case proceeding based on the board member's participation in the informal review. A party who elects informal review retains the right to seek disqualification of board members on any other ground pursuant to subrule 69.14(4).~~

ITEM 5. Rescind and reserve rule ~~875—69.6(17A,89A)~~.

ITEM 6. Amend rule ~~875—69.7(17A,89A)~~ as follows:

~~875—69.7(17A,89A)~~ File transmitted to the board. Within 30 days of the issuance of a notice of hearing, the commissioner shall forward to each board member and all parties of record to the appeal copies of the applicable documents set forth below:

1. Inspection report,
2. Petition for reconsideration with the appellant's attachments,
3. Documents obtained by the commissioner in ruling on the petition for reconsideration,
4. Commissioner's ruling on the petition for reconsideration, ~~and~~
5. Commissioner's decision denying, suspending, or revoking an operating permit, and
- ~~5- 6.~~ Appeal to the board.

ITEM 7. Amend paragraph ~~69.9(2)“e”~~ as follows:

~~e.~~ Funds are unavailable to pay the costs of an administrative law judge and an ~~interboard~~ intra-agency appeal.

ITEM 8. Amend subrule 69.10(1) as follows:

69.10(1) *Service—when required.* Except where otherwise provided by law, ~~when a every~~ every document is filed in a contested case proceeding, ~~it~~ shall be served upon each of the parties of record. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16, subsection 2, the party filing a document is responsible for service on all parties.

LABOR SERVICES DIVISION[875](cont'd)

ITEM 9. Amend paragraph **69.15(1)“c”** as follows:

c. Consolidation would not adversely affect the rights of any ~~of the parties~~ party to those proceedings.

ITEM 10. Amend subrule 69.17(7) as follows:

69.17(7) A person ~~who is~~ aggrieved by a ruling of an administrative law judge ~~and~~ who desires to challenge that ruling must appeal the ruling to the board by serving on the board, either in person or by certified mail, a notice of appeal within ten days after service of the decision of the administrative law judge. If the decision of the administrative law judge to quash or modify the subpoena or to deny the motion to quash or modify the subpoena is appealed to the board, the board may uphold or overturn the decision of the administrative law judge.

ITEM 11. Amend rule 875—69.19(17A,89A) as follows:

875—69.19(17A,89A) Settlements. A contested case may be resolved by informal settlement, and settlements are encouraged. Settlement negotiations may be initiated at any stage of a contested case by any party. ~~The board shall not be involved in negotiation until a written proposed settlement is submitted for approval, unless the parties waive this prohibition.~~ All settlements are subject to approval by a majority of the board. No settlement shall be presented to the board for approval except in final, written form executed by the parties. If the board fails to approve the settlement, the settlement shall be of no force or effect to either party.

ITEM 12. Amend rule 875—69.26(17A,89A) as follows:

875—69.26(17A,89A) Interlocutory appeals. ~~Upon written request of a party or on its own motion, the board may review an interlocutory order of the administrative law judge, such as a ruling on a motion to quash a subpoena or other prehearing motion. In determining whether to do so, the board shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of the interlocutory order at the time of the issuance of a final decision would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the date for compliance with the order or the date of hearing, whichever is earlier.~~

69.26(1) Upon written request of a party or on its own motion, the board may review an interlocutory order of the administrative law judge. In determining whether to do so, the board shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of the interlocutory order at the time of the issuance of a final decision would provide an adequate remedy.

69.26(2) Any request for interlocutory review under this rule must be filed within 14 days of issuance of the challenged order, but no later than the date for compliance with the order or the date of hearing, whichever is earlier.

69.26(3) This rule does not apply to the ruling of an administrative law judge after hearing on a motion to quash or modify a subpoena. The procedures for challenging such a ruling are set forth in subrule 69.17(7).

ITEM 13. Adopt the following **new** definitions of “Acceptance checklist” and “Remote manipulation” in rule **875—71.1(89A)**:

“*Acceptance checklist*” means a checklist available on the Web site of the division of labor services that includes a list of major systems and components of conveyances.

“*Remote manipulation*” means a change in the status of a conveyance or any of the components of a conveyance, including but not limited to its controls, controller, or safety devices, that is accomplished by a person who is not on site with the conveyance. “Remote manipulation” does not include remote monitoring.

LABOR SERVICES DIVISION[875](cont'd)

ITEM 14. Amend subrule 71.10(1), introductory paragraph, as follows:

71.10(1) Elevators. When any combination of alterations or changes is made that constitutes more than 50 percent of the elevator, the entire elevator shall be brought into compliance with ~~ASME A17.1-2007/CSA B44-07~~ ASME A17.1-2010/CSA B44-07, and it shall be deemed a new elevator.

ITEM 15. Amend subparagraph **71.11(2)“b”(3)** as follows:

(3) ~~After each~~ For a new installation, not less than two business days after a completed acceptance checklist is submitted by the conveyance installation company.

ITEM 16. Amend subparagraph **71.14(1)“b”(3)** as follows:

(3) ~~ASME A17.1-2007/CSA B44-07~~ ASME A17.1-2010/CSA B44-07, Part 8, (except for Rule 8.11.1.1);

ITEM 17. Amend subrule 72.1(7), introductory paragraph, as follows:

72.1(7) For installations ~~on or after~~ between July 23, 2008, and May 8, 2012:

ITEM 18. Adopt the following **new** subrule 72.1(8):

72.1(8) For installations on or after May 9, 2012:

- a. ASME A17.1 shall mean ASME A17.1-2010/CSA B44-10, except for rule 2.27.1.1.6;
- b. ASME A17.7 shall mean ASME A17.7-2007/CSA B44-10;
- c. ASME A18.1 shall mean ASME A18.1 (2003), except Chapters 4, 5, 6, and 7;
- d. ANSI A117.1 shall mean ANSI A117.1 (2003), except for Rule 407.4.6.2.2; and
- e. ANSI/NFPA 70 shall mean ANSI/NFPA 70 (2008).

ITEM 19. Adopt the following **new** subrule 72.13(6):

72.13(6) Remote manipulation.

a. No person shall perform remote manipulation of a conveyance component or safety system unless the following criteria are met:

(1) The software design shall prohibit remote manipulation unless control of the conveyance is transferred to the remote location by an elevator mechanic who is on site with the conveyance.

(2) An elevator mechanic shall be on site with the conveyance and shall remove the conveyance from service prior to remote manipulation.

(3) The elevator mechanic on site with the conveyance shall confirm the conveyance components and safety systems are properly functioning before returning the conveyance to service.

b. The maintenance records provisions of ASME A17.1 shall apply to remote manipulation. In addition to the information required by ASME A17.1, the maintenance records for remote manipulation shall include the name of the elevator mechanic who was on site with the conveyance and performed the steps outlined in 72.13(6) “a”(1) to (3).

ITEM 20. Adopt the following **new** subrule 73.8(7):

73.8(7) Remote manipulation.

a. No person shall perform remote manipulation of a conveyance component or safety system unless the following criteria are met:

(1) The software design shall prohibit remote manipulation unless control of the conveyance is transferred to the remote location by an elevator mechanic who is on site with the conveyance.

(2) An elevator mechanic shall be on site with the conveyance and shall remove the conveyance from service prior to remote manipulation.

(3) The elevator mechanic on site with the conveyance shall confirm the conveyance components and safety systems are properly functioning before returning the conveyance to service.

b. The maintenance records provisions of ASME A17.1 shall apply to remote manipulation. In addition to the information required by ASME A17.1, the maintenance records for remote manipulation shall include the name of the elevator mechanic who was on site with the conveyance and performed the steps outlined in 73.8(7) “a”(1) to (3).

ARC 0010C**PROFESSIONAL LICENSURE DIVISION[645]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Chiropractic hereby gives Notice of Intended Action to amend Chapter 44, “Continuing Education for Chiropractic Physicians,” Iowa Administrative Code.

The proposed amendment provides the conditions by which on-line instruction may qualify for “live” continuing education credit.

Any interested person may make written comments on the proposed amendment no later than March 13, 2012, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail pierce.wilson@idph.iowa.gov.

A public hearing will be held on March 13, 2012, from 9 to 9:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment.

After analysis and review of this rule making, there should be a positive impact on jobs. This amendment would allow chiropractors the ability to take continued education classes on the Internet. Chiropractors would be allowed to see patients and work rather than cancel appointments for the day to attend out-of-town seminars.

This amendment is intended to implement Iowa Code chapters 21, 147, 151 and 272C.

The following amendment is proposed.

Amend subparagraph **44.3(2)“a”(1)** as follows:

(1) At least 36 hours of continuing education credit obtained from a program that directly relates to clinical case management of chiropractic patients. Beginning with the July 1, 2008, to June 30, 2010, renewal cycle, at least 24 of these hours shall be earned by completing a program in which an instructor conducts the class employing either a traditional in-person classroom-type presentation or a live presentation through the Iowa Communications Network (ICN) live interactive Web conferencing. Beginning with the July 1, 2012, to June 30, 2014, renewal cycle, on-line instruction may qualify for “live” continuing education credit if provided by a Council on Chiropractic Education (CCE)-accredited chiropractic college in the United States, the Iowa Chiropractic Society, the American Chiropractic Association, or the International Chiropractors Association or if certified by the Providers of Approved Continuing Education (PACE) through the Federation of Chiropractic Licensing Boards (FCLB). The remaining 12 hours may be obtained by independent study, including any on-line instruction.

TREASURER OF STATE**Notice—Public Funds Interest Rates**

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions JoAnn Johnson, Superintendent of Banking James M. Schipper, and Auditor of State David A. Vautt have established today the following rates of interest for public obligations and special assessments. The usury rate for February is 4.00%.

TREASURER OF STATE(cont'd)

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

74A.2 Unpaid Warrants	Maximum 6.0%
74A.4 Special Assessments	Maximum 9.0%

RECOMMENDED Rates for Public Obligations (74A.3) and School District Warrants (74A.7). A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities. All Iowa Banks and Iowa Savings Associations as defined by Iowa Code section 12C.1 are eligible for public fund deposits as defined by Iowa Code section 12C.6A.

The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens.

New official state interest rates, effective February 9, 2012, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

7-31 days	Minimum .05%
32-89 days	Minimum .05%
90-179 days	Minimum .05%
180-364 days	Minimum .05%
One year to 397 days	Minimum .05%
More than 397 days	Minimum .35%

These are minimum rates only. The one year and less are four-tenths of a percent below average rates. Public body treasurers and their depositories may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Michael L. Fitzgerald, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

ARC 0021C

AGRICULTURAL DEVELOPMENT AUTHORITY[25]

Adopted and Filed

Pursuant to the authority of Iowa Code section 175.2(2), the Agricultural Development Authority hereby amends Chapter 6, "Beginning Farmer Tax Credit Program," Iowa Administrative Code.

The amendment increases the maximum net worth for a beginning farmer to qualify for the Beginning Farmer Tax Credit Program. Additionally, the maximum net worth will be indexed annually to account for inflation.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 9948B** on December 28, 2011. No comments were received from the public. The amendment is identical to that published under Notice.

After analysis and review of this rule making, no adverse impact on jobs has been found. This amendment helps beginning farmers qualify for tax credits.

This amendment is intended to implement Iowa Code sections 175.3 and 175.5.

This amendment will become effective March 28, 2012.

The following amendment is adopted.

Amend rule **25—6.1(175)**, definition of "Eligible applicant," as follows:

"Eligible applicant" means an individual who has a net worth of less than ~~\$300,000 and who satisfies~~ \$343,000. The maximum net worth will be indexed annually based on the October 1 annual change in the United States Department of Agriculture's Prices Paid by Farmers Index. The applicant must also satisfy all of the criteria contained in 2006 Iowa Acts, Senate File 2268, Iowa Code section 175.37 and provisions of these rules relating to recipient eligibility; and who operates or will must operate or intend to operate a farm.

[Filed 2/2/12, effective 3/28/12]

[Published 2/22/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/22/12.

ARC 0016C

EDUCATION DEPARTMENT[281]

Adopted and Filed

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby amends Chapter 12, "General Accreditation Standards," Iowa Administrative Code.

This chapter sets accreditation standards for all Iowa school districts and accredited nonpublic schools. A brief description of the five items and the rationale for the rule making in each item are as follows:

Item 1 strikes a reference to a statute (Iowa Code section 272.33) that has been repealed.

Item 2 adds a clarification that one individual may not simultaneously serve as superintendent, secondary principal, and elementary principal. This amendment conforms to Iowa Code section 280.14(2). The clarification is already in subrule 12.4(4) and is added in subrule 12.4(6) as a convenience for the reader.

Item 3 rescinds the rule that required a certification of fitness because this is not an accreditation requirement. School bus drivers are still subject to a physical examination requirement.

Item 4 implements 2011 Iowa Acts, Senate File 453, by adding terms and conditions under which schools and school districts may award secondary credit to non-secondary students.

Item 5 defines the components of twenty-first century learning skills to comply with Iowa Code section 256.7(26)(a).

An agencywide waiver provision is provided in 281—Chapter 4.

EDUCATION DEPARTMENT[281](cont'd)

Notice of Intended Action was published in the December 14, 2011, Iowa Administrative Bulletin as **ARC 9909B**. Public comments were allowed until 4:30 p.m. on January 3, 2012. A public hearing was held on that date and no persons attended. No written or oral comments were received. However, in response to information noted by a member of the Administrative Rules Review Committee, the reference to grades 7 and 8 in Item 4 has been changed to any grade level that precedes grade 9.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement 2011 Iowa Code Supplement section 256.7(26) and Iowa Code section 280.14(2).

These amendments shall become effective March 28, 2012.

The following amendments are adopted.

ITEM 1. Amend subrule 12.3(3) as follows:

12.3(3) *Personnel evaluation.* Each board shall adopt evaluation criteria and procedures for all contracted staff. The evaluation processes shall conform to Iowa Code sections ~~272.33~~, 279.14, and 279.23A.

ITEM 2. Amend subrule 12.4(6) as follows:

12.4(6) *Staffing policies—secondary schools.* The board operating a secondary school shall develop and adopt staffing policies designed to attract, retain, and effectively utilize competent personnel. Each board operating a secondary school shall employ at least one secondary principal. This position may be combined with that of elementary principal or with a teaching assignment at the elementary or secondary level, provided the individual holds the proper licenses/certificates and endorsements. This position ~~cannot~~ may be combined with that of superintendent, but one person may not serve as elementary principal, secondary principal, and superintendent.

ITEM 3. Rescind and reserve subrule **12.4(14)**.

ITEM 4. Adopt the following **new** paragraph **12.5(4)“I”**:

l. Secondary credit.

(1) An individual pupil in a grade that precedes ninth grade may be allowed to take a course for secondary credit if all of the following are true:

1. The pupil satisfactorily completes the course.
2. The course is in the curricular area of English or language arts, mathematics, science, or social studies.
3. The course is taught by a teacher licensed by the Iowa board of educational examiners for grades 9-12 and endorsed in the subject area.
4. The course meets all components listed in subrule 12.5(5) for the specific curricular area.
5. The board of the school district or the authorities in charge of the nonpublic school have developed enrollment criteria that a student must meet to be enrolled in the course.

(2) Neither school districts nor accredited nonpublic schools are mandated to offer secondary credit under this paragraph. If credit is offered under this paragraph, the credit must apply toward graduation requirements of the district or accredited nonpublic school.

ITEM 5. Adopt the following **new** subrule 12.5(17):

12.5(17) *Twenty-first century learning skills.* Twenty-first century learning skills include civic literacy, health literacy, technology literacy, financial literacy, and employability skills. Schools and school districts shall address the curricular needs of students in kindergarten through grade twelve in these areas. In doing so, schools and school districts shall apply to all curricular areas the universal constructs of critical thinking, complex communication, creativity, collaboration, flexibility and adaptability, and productivity and accountability.

a. Civic literacy. Components of civic literacy include rights and responsibilities of citizens; principles of democracy and republicanism; purpose and function of the three branches of government; local, state, and national government; inherent, expressed, and implied powers; strategies for effective political action; how law and public policy are established; how various political systems define rights and responsibilities of the individual; the role of the United States in current world affairs.

EDUCATION DEPARTMENT[281](cont'd)

b. Health literacy. Components of health literacy include understanding and using basic health concepts to enhance personal, family and community health; establish and monitor health goals; effectively manage health risk situations and advocate for others; demonstrate a healthy lifestyle that benefits the individual and society.

c. Technology literacy. Components of technology literacy include creative thinking; development of innovative products and processes; support of personal learning and the learning of others; gathering, evaluating, and using information; use of appropriate tools and resources; conduct of research; project management; problem solving; informed decision making.

d. Financial literacy. Components of financial literacy include developing short- and long-term financial goals; understanding needs versus wants; spending plans and positive cash flow; informed and responsible decision making; repaying debt; risk management options; saving, investing, and asset building; understanding human, cultural, and societal issues; legal and ethical behavior.

e. Employability skills. Components of employability skills include different perspectives and cross-cultural understanding; adaptability and flexibility; ambiguity and change; leadership; integrity, ethical behavior, and social responsibility; initiative and self-direction; productivity and accountability.

[Filed 1/31/12, effective 3/28/12]

[Published 2/22/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/22/12.

ARC 0015C

EDUCATION DEPARTMENT[281]

Adopted and Filed

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby amends Chapter 24, "Community College Accreditation," Iowa Administrative Code.

The amendments in Items 2 and 4 conform the rules to 2011 Iowa Acts, Senate File 470, sections 9 and 6, respectively. The other amendments reflect the new accreditation process being put into place by the Higher Learning Commission, including the phasing out of accreditation by the Program to Evaluate Academic Quality. The Department discussed the amendments with representatives from several stakeholder groups, including the Iowa Association of Community College Presidents (IACCP).

An agencywide waiver provision is provided in 281—Chapter 4.

Notice of Intended Action was published in the December 14, 2011, Iowa Administrative Bulletin as **ARC 9907B**. Public comments were allowed until 4:30 p.m. on January 3, 2012. A public hearing was held on that date and no persons attended. No written or oral comments were received. These amendments are identical to those published under Notice.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement 2011 Iowa Acts, Senate File 470, sections 6 and 9.

These amendments shall become effective March 28, 2012.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [24.4 to 24.6] is being omitted. These amendments are identical to those published under Notice as **ARC 9907B**, IAB 12/14/11.

[Filed 1/31/12, effective 3/28/12]

[Published 2/22/12]

[For replacement pages for IAC, see IAC Supplement 2/22/12.]

ARC 0014C

EDUCATION DEPARTMENT[281]

Adopted and Filed

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby amends Chapter 97, "Supplementary Weighting," Iowa Administrative Code.

The amendments conform to 2011 Iowa Acts, House File 645, section 15. A regional academy may serve students in grades seven and eight. A new provision of statute requires school districts that participate in a regional academy to agree on how the funds received under rule 281—97.4(257) shall be used and to submit the agreement to the Department for approval.

An agencywide waiver provision is provided in 281—Chapter 4.

Notice of Intended Action was published in the December 14, 2011, Iowa Administrative Bulletin as **ARC 9908B**. Public comments were allowed until 4:30 p.m. on January 3, 2012. A public hearing was held on that date and no persons attended. No written or oral comments were received. These amendments are identical to those published under Notice.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 261E.9 as amended by 2011 Iowa Acts, House File 645, section 15.

These amendments shall become effective March 28, 2012.

The following amendments are adopted.

ITEM 1. Amend rule **281—97.1(257)**, definition of "Regional academy," as follows:

"*Regional academy*" shall mean an educational program established by a school district to which multiple school districts send students in grades 9 7 through 12. The curriculum shall include advanced-level courses and, in addition, may include career-technical courses, Internet-based courses, and coursework delivered via the ICN. Regional academy courses shall not qualify as concurrent enrollment courses and do not generate any postsecondary credit. School districts participating in regional academies are eligible for supplementary weighting as provided in Iowa Code section 257.11, subsection 2.

ITEM 2. Amend paragraph **97.4(1)“c”** as follows:

c. The grade levels include one or more grades ~~nine~~ seven through twelve.

ITEM 3. Adopt the following **new** paragraph **97.4(1)“h”**:

h. The school districts participating in a regional academy shall enter into an agreement on how the funding generated by the supplementary weighting received shall be used and shall submit the agreement, as well as a copy of the minutes of meetings of the local school district boards of directors in which the boards approved the agreement, to the department for approval by October 1 of the year in which the districts intend to request supplementary weighting for the regional academy.

[Filed 1/31/12, effective 3/28/12]

[Published 2/22/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/22/12.

ARC 0012C

EDUCATION DEPARTMENT[281]

Adopted and Filed

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby amends Chapter 98, "Financial Management of Categorical Funding," Iowa Administrative Code.

The amendment in Item 1 conforms to 2011 Iowa Acts, House File 645, sections 23 through 25, which address appropriate and inappropriate uses of funding for a home school assistance program. The amendment in Item 2 reflects the amendment to the allowable uses of the Physical Plant and Equipment

EDUCATION DEPARTMENT[281](cont'd)

Levy in 2011 Iowa Acts, House File 645, section 20. The definition of “maintenance” in Item 3 has its origin in statutory and case law, as well as the Uniform Financial Accounting Procedures, and is added as a courtesy to school districts.

An agencywide waiver provision is provided in 281—Chapter 4.

Notice of Intended Action was published in the October 5, 2011, Iowa Administrative Bulletin as **ARC 9793B**. Public comments were allowed until 4:30 p.m. on October 25, 2011. A public hearing was held on that date at which no person appeared. However, at an informal meeting on November 4, 2011, approximately six persons representing education stakeholder groups met with a representative of the Department to provide written and oral comments. The comments focused on two issues:

- Regarding subparagraph 98.64(2)“e”(2), the commenters requested that “transaction” be defined rather than “bundle” and that a single transaction be defined to include more than one provider of services.
- Commenters pointed out that the definition of “maintenance” in Item 3 is confusing because it includes items (i.e., making minor repairs, replacing parts) that could also be included as “repairs.”

Regarding the first issue, the Department agrees that it is more helpful to school districts to define “transaction” and not “bundle.” The Department spoke with staff from both caucuses of both chambers of the legislature about their members’ intent, and received confirmation that the members’ intent was that a single transaction be defined as an agreement between a school district and a vendor rather than as an agreement between two or more vendors. Accordingly, the definition of “transaction” in subparagraph 98.64(2)“e”(2) has been changed since publication under Notice of Intended Action. Subparagraph 98.64(2)“e”(2) now reads as follows:

“(2) ‘Transaction’ means a business deal or agreement between a school district and a provider of goods or services. Technology may be bundled for purposes of exceeding \$500 per transaction.”

The Department agrees in part with the commenters about their second issue and has stricken “making minor repairs” from the definition of “maintenance” in paragraph 98.64(2)“h.” The Department has added language to clarify that replacing parts is “maintenance” unless to do so fits the definition of “repair.” The definition of “maintenance” in paragraph 98.64(2)“h” now reads as follows: “‘Maintenance’ means to cause to remain in a state of good repair or to keep equipment in effective working condition and ready for daily use. Maintenance includes cleaning, upkeep, inspecting for needed maintenance, preserving the existing state or condition, preventing a decline in the existing state or condition, and replacing parts, unless otherwise a repair.”

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement 2011 Iowa Code Supplement sections 298.3(1)“c” and 299A.12.

These amendments shall become effective March 28, 2012.

The following amendments are adopted.

ITEM 1. Amend rule 281—98.12(257,299A) as follows:

281—98.12(257,299A) Home school assistance program. The home school assistance program (HSAP) is a program for a specific category of students and is provided outside the basic educational program provided to regularly enrolled students by the school district. If a district offers a home school assistance program, the state foundation aid that the district receives pursuant to Iowa Code section 257.6(1)“a”(5) shall be expended for purposes of providing the home school assistance program.

98.12(1) Appropriate uses of categorical funding. Appropriate uses of the home school assistance program funding include, but are not limited to, the following:

- a. Assisting Instruction for students and assistance for parents with instruction.
- b. to h. No change.

98.12(2) Inappropriate uses of categorical funding. Inappropriate uses of the home school assistance program funding include, but are not limited to, indirect costs or use charges; operational or maintenance costs ~~in addition to the cost of maintaining school district facilities other than those necessary to operate and maintain the program;~~ capital expenditures other than equipment or facility acquisition, including the lease or rental of space to supplement existing schoolhouse facilities; student transportation except in cases of home school assistance program-approved field trips or other

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educational activities; administrative costs other than the costs necessary to administer the program; concurrent and dual enrollment program costs, including postsecondary enrollment options program costs; or any other expenditures not directly related to providing the home school assistance program. A home school assistance program shall not provide moneys to parents or students utilizing the program.

ITEM 2. Amend paragraph **98.64(2)“e”** as follows:

e. Purchasing, leasing, or lease-purchasing ~~a single unit of equipment or a single unit of technology exceeding \$500 in value per unit purchase, lease, or lease-purchase transaction.~~ “Single unit of equipment” means both equipment and furnishings and does not include bulk purchases or multiple purchases of units. The cost limitation for a single unit of equipment does not apply to recreational equipment or equipment that becomes an integral part of real property such as furnaces, boilers, water heaters, and central air-conditioning units that are included in repairs to a building.

(1) “Equipment” means both equipment and furnishings. The cost limitation for equipment does not apply to recreational equipment pursuant to paragraph 98.64(2)“n” or equipment that becomes an integral part of real property such as furnaces, boilers, water heaters, and central air-conditioning units that are included in repairs to a building pursuant to paragraph 98.64(2)“h.”

(2) “Transaction” means a business deal or agreement between a school district and a provider of goods or services. Technology may be bundled for purposes of exceeding \$500 per transaction.

ITEM 3. Amend paragraph **98.64(2)“h”** as follows:

h. Repairing, remodeling, reconstructing, improving, or expanding the schoolhouses or buildings and the additions to existing schoolhouses. “Repairing” means restoring an existing structure or thing to its original condition, as near as may be, after decay, waste, injury, or partial destruction, but does not include maintenance. “Reconstructing” means rebuilding or restoring as an entity a thing which was lost or destroyed. “Maintenance” means to cause to remain in a state of good repair or to keep equipment in effective working condition and ready for daily use. Maintenance includes cleaning, upkeep, inspecting for needed maintenance, preserving the existing state or condition, preventing a decline in the existing state or condition, and replacing parts, unless otherwise a repair.

ITEM 4. Amend **281—Chapter 98**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapters 24, 29C, 76, 143, 256, 256B, 257, 274, 275, 276, 279, 280, 282, 283A, 284, 284A, 285, 291, 294A, 296, 298, 298A, 299A as amended by 2010 Iowa Acts, Senate File 2376, section 40, 300, 301 as amended by 2010 Iowa Acts, Senate File 2478, 423E, 423F, 565, and 670, and Iowa Code sections 11.6(1)“a”(1), 256C.4(1)“c,” 256D.4(3) and 284.13, and 2011 Iowa Code Supplement chapters 298 and 299A.

[Filed 1/31/12, effective 3/28/12]

[Published 2/22/12]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 2/22/12.

ARC 0013C

EDUCATION DEPARTMENT[281]

Adopted and Filed

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby adopts new Chapter 99, “Business Procedures and Deadlines,” Iowa Administrative Code.

This chapter was prepared at the request of the members of the School Budget Review Committee (SBRC), who noted that one single chapter of rules in which financial deadlines and other general principles appear would be a convenience for school districts, area education agencies, the SBRC, and the general public.

An agencywide waiver provision is provided in 281—Chapter 4.

Notice of Intended Action was published in the December 14, 2011, Iowa Administrative Bulletin as **ARC 9916B**. Public comments were allowed until 4:30 p.m. on January 3, 2012. A public hearing was

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held on that date and no persons attended. No written or oral comments were received. These rules are identical to those published under Notice.

After analysis and review of this rule making, no impact on jobs has been found.

These rules are intended to implement Iowa Code chapters 24, 256, 257, 285, and 291.

These rules shall become effective March 28, 2012.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 99] is being omitted. These rules are identical to those published under Notice as **ARC 9916B**, IAB 12/14/11.

[Filed 1/31/12, effective 3/28/12]

[Published 2/22/12]

[For replacement pages for IAC, see IAC Supplement 2/22/12.]

ARC 0017C

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 97B.4 and 97B.15, the Iowa Public Employees' Retirement System (IPERS) hereby amends Chapter 2, "Investment Board," Chapter 4, "Employers," Chapter 7, "Service Credit and Vesting Status," Chapter 11, "Application for, Modification of, and Termination of Benefits," Chapter 12, "Calculation of Monthly Retirement Benefits," and Chapter 14, "Death Benefits and Beneficiaries," Iowa Administrative Code.

These amendments update a superseded citation to former Iowa Code chapter 19A; implement new contribution rates for regular and special service members effective July 1, 2012; adopt a vesting provision required by the IRS in IPERS' most recent determination letter ruling; adopt a vesting interpretation necessitated by the description of pre-July 1, 2012, vesting contained in 2010 Iowa Acts, House File 2518, section 21; adopt a lump sum paper warrant processing fee of \$1; modify the method by which the lump sum present value is determined for preretirement death benefits for members with both regular and special service credits; and clarify a death benefits provision relating to members who retire, are reemployed, and die without re-retiring.

In addition, multiple items are adopted or amended to conform the current rules to the requirements of 2010 Iowa Acts, House File 2518, primarily to reflect vesting changes, early retirement reduction changes, and average salary changes contained in that bill.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 28, 2011, as **ARC 9951B**. A public hearing was held on January 17, 2012, at 9 a.m. at IPERS, 7401 Register Drive, Des Moines, Iowa, in Conference Room D. No one attended the public hearing, and no written comments were received. These amendments are identical to those published under Notice.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code sections 97B.4 and 97B.15.

These amendments will become effective March 28, 2012.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [2.1, 4.6, 7.1(1), 7.3, 11.6, 12.1, 12.4, 12.5, 12.7(7), 12.8, 14.12] is being omitted. These amendments are identical to those published under Notice as **ARC 9951B**, IAB 12/28/11.

[Filed 2/1/12, effective 3/28/12]

[Published 2/22/12]

[For replacement pages for IAC, see IAC Supplement 2/22/12.]

ARC 0022C**PROFESSIONAL LICENSURE DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Dietetics hereby amends Chapter 83, "Discipline for Dietitians," Iowa Administrative Code.

This amendment clarifies that conviction of a crime includes when the judgment of conviction or sentence was deferred.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 5, 2011, as **ARC 9799B**. A public hearing was held on November 2, 2011, from 10 to 10:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No public comments were received. This amendment is identical to that published under Notice.

After analysis and review of this rule making, no impact on jobs has been found.

This amendment is intended to implement Iowa Code chapters 21, 147, 152A and 272C.

This amendment will become effective March 28, 2012.

The following amendment is adopted.

Amend subrule 83.2(12) as follows:

83.2(12) Conviction of a crime related to the profession or occupation of the licensee or the conviction of any crime that would affect the licensee's ability to practice ~~dietetics~~ within the profession, regardless of whether the judgment of conviction or sentence was deferred. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

[Filed 2/3/12, effective 3/28/12]

[Published 2/22/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/22/12.

ARC 0024C**PROFESSIONAL LICENSURE DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Nursing Home Administrators hereby amends Chapter 141, "Licensure of Nursing Home Administrators," and Chapter 144, "Discipline for Nursing Home Administrators," Iowa Administrative Code.

These amendments remove the requirement for the Board to send a renewal notice to the licensee to make licensure requirements consistent with Code of Iowa changes. The amendments also clarify that conviction of a crime includes when the judgment of conviction or sentence was deferred.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 5, 2011, as **ARC 9801B**. A public hearing was held on November 1, 2011, from 10 to 10:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No public comments were received. These amendments are identical to those published under Notice.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapters 21, 147, 155 and 272C.

These amendments will become effective March 28, 2012.

The following amendments are adopted.

ITEM 1. Amend subrule 141.9(1) as follows:

141.9(1) The biennial license renewal period for a license to practice nursing home administration shall begin on January 1 of each even-numbered year and end on December 31 of the next odd-numbered year. All licensees shall renew on a biennial basis. ~~The board shall send a renewal notice by regular mail to each licensee at the address on record at least 60 days prior to the expiration of the license. The~~

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive ~~the~~ the notice from the board does not relieve the licensee of the responsibility for renewing the license.

ITEM 2. Amend subrule 144.2(13) as follows:

144.2(13) Conviction of a crime related to the profession or occupation of the licensee or the conviction of any crime that would affect the licensee's ability to practice as ~~a nursing home administrator~~ within the profession, regardless of whether the judgment of conviction or sentence was deferred. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

[Filed 2/3/12, effective 3/28/12]

[Published 2/22/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/22/12.

AGENCY	RULE	DELAY
Professional Licensure Division[645]	353.2(12) [IAB 1/11/12, ARC 9967B]	Effective date of February 15, 2012, delayed 70 days by the Administrative Rules Review Committee at its meeting held February 10, 2012. [Pursuant to §17A.4(7)]